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Twelve agencies have agreed to a six-month trial period based on the assignment of two days a week beginning February 9 and ending August 6 (See 41 FR 5453). The participating agencies and the days assigned are as follows:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
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DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/PSOO	LABOR		DOT/PSOO	LABOR

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this trial program are invited. Comments should be submitted to the Director of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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An act to amend the Public Health Service Act to provide authority for health information and health promotion programs, to revise and extend the authority for disease prevention and control programs, and to revise and extend the authority for venereal disease programs, and to amend the Lead-Based Paint Poisoning Prevention Act to revise and extend that Act.
(June 23, 1976; 90 Stat. 695)

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Title 3—The President

Executive Order 11924 • June 29, 1976

Exemption of Arthur S. Flemming From Mandatory Retirement

Arthur S. Flemming, Commissioner on Aging, Department of Health, Education, and Welfare, and Chairman, Commission on Civil Rights, became subject to mandatory retirement for age on June 30, 1975, under the provisions of Section 8335 of Title 5 of the United States Code unless exempted by Executive Order. Dr. Flemming was exempted from mandatory retirement until June 30, 1976, by Executive Order No. 11869 of June 24, 1975.

In my judgment, the public interest requires that Arthur S. Flemming continue to be exempted from such mandatory retirement.

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of Section 8335 of Title 5 of the United States Code, I hereby exempt Arthur S. Flemming from mandatory retirement until June 30, 1977.

Gerald R. Ford

THE WHITE HOUSE,
June 29, 1976.

[FR Doc.76-19176 Filed 6-29-76;11:39 am]

Executive Order 11925 • June 29, 1976

Promotion of Navy and Marine Corps Officers From Below the Appropriate Promotion Zone

By virtue of the authority vested in me by section 5711(b) of Title 10 of the United States Code, and as President of the United States of America and Commander in Chief of the Armed Forces, Executive Order No. 11554 of August 29, 1970, as amended, is further amended by deleting "June 30, 1976" and inserting in lieu thereof "September 30, 1978".

Gerald R. Ford

THE WHITE HOUSE,
June 29, 1976.

[FR Doc.76-19177 Filed 6-29-76;11:40 am]

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 7—Agriculture

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

[Cherry Regulation 15]

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Regulation by Grade, Size, and Container

This regulation sets minimum grade, size, and container requirements for sweet cherries grown in central Washington for the period July 1, 1976, through June 30, 1977. The requirements are designed to promote orderly marketing in the interest of producers and consumers.

On June 2, 1976, notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 22278) regarding a proposed regulation to be made effective pursuant to the marketing agreement and Order No. 923 (7 CFR Part 923), regulating the handling of sweet cherries grown in designated counties in Washington. This notice allowed interested persons 14 days during which they could submit written data, views, or arguments pertaining to this proposed regulation. None were submitted. The regulation was recommended by the Washington Cherry Marketing Committee established pursuant to the said marketing agreement and order. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This action reflects the Department's appraisal of the need for regulation and of the crop and current and prospective marketing conditions. This regulation which becomes effective July 1, 1976, is the same as Cherry Regulation 14 (40 F.R. 27463) currently in effect through June 30, 1976. Shipments of sweet cherries from the production area are now in progress.

Under this regulation, shipments of cherries are required to grade U.S. No. 1 or better, except for a small increase in the tolerance for defects. The cherries also need be 48/64 inch in diameter or larger in all containers, except for those in face-packed containers, 20-pound containers or larger, or experimental containers, for which the minimum size is 54/64 inch. The container requirements specify the minimum amount of cherries, by weight, which need be in the various types of containers. Individual shipments of cherries up to 100 pounds sold for home use and not for resale are excepted from the grade, size, and container requirements, if certain conditions are met to prevent their movement into commercial markets.

The grade and size requirements are designed to ensure the shipment of ample supplies of cherries of the better grades and more desirable sizes in the interest of producers and consumers, and to maintain orderly marketing conditions by preventing the demoralizing effect on the market caused by the shipment of lower quality and smaller-sized cherries when more than ample supplies of the more desirable grades and sizes are available to serve consumers' needs. The container requirements are designed to prevent deceptive packaging practices, thereby promoting buyer confidence.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the recommendation and information submitted by the committee, and other available information, it is hereby found and determined that the regulation, as hereinafter set forth, is in accordance with the provisions of the said marketing agreement and order and will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice of proposed rulemaking concerning this regulation allowing 14 days for filing written comments was published in the FEDERAL REGISTER on June 2, 1976, and no objection to the regulation or its effective date was received; (2) compliance with the regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof; and (3) shipment of sweet cherries from the production area is now in progress, and this regulation should be applicable, insofar as practicable, to all shipments of such cherries in order to effectuate the declared policy of the act.

§ 923.315 Cherry Regulation 15.

Order. (a) *Grade and sizes.* During the period July 1, 1976, through June 30, 1977, no handler shall handle, except as otherwise provided in paragraphs (b) and (c) of this section, any lot of cherries unless such cherries meet each of the following applicable requirements:

(1) U.S. No. 1 grade except that the following tolerances, by count, of the cherries in the lot shall apply in lieu of the tolerances for defects provided in the United States Standards for Grades of Sweet Cherries:

(i) A total of 10 percent for defects including in this amount not more than 5 percent, by count, of the cherries in the lot, for serious damage, and including in this latter amount not more than one percent, by count, of the cherries in the lot, for cherries affected by decay: *Provided,* That the contents of individual packages in the lot are not limited as to the percentage of defects but the total of the defects of the entire lot shall be within the tolerances specified.

(2) At least 95 percent, by count, of the cherries in the lot shall measure not less than 48/64 inch in diameter, except as hereinafter provided in paragraph (b)(2)(ii) and paragraph (a)(3) of this section.

(3) At least 90 percent, by count, of the cherries in any lot of face-packed containers or any containers of 20 pounds, net weight, or more shall measure not less than 54/64 inch in diameter and not more than 5 percent, by count, of such cherries may be less than 48/64 inch in diameter.

(b) *Containers.* During the period July 1, 1976, through June 30, 1977, no handler shall handle any lot of cherries, unless such cherries are in containers which meet each of the following applicable requirements:

(1) The net weight of the cherries in any container having a capacity greater than that of a container with inside dimensions of 15⅛ by 10½ by 4 inches shall not be less than 20 pounds; and all containers of cherries shall contain at least 12 pounds, net weight, of cherries.

(2) Subject to the provisions of paragraphs (b)(2)(i) and (ii) of this section, shipments of cherries may be handled in such experimental containers as have been approved by the Washington Cherry Marketing Committee.

(i) All shipments handled in such containers shall be under the supervision of the committee; and

(ii) At least 90 percent, by count, of the cherries in any lot of such containers shall measure not less than 54/64 inch in diameter, and not more than 5 percent, by count, of such cherries may be less than 48/64 inch in diameter.

(c) *Exceptions.* Notwithstanding any other provisions of this section, any individual shipment of cherries which meets each of the following requirements may be handled without regard to the provisions of paragraphs (a) and (b) of this section, and of §§ 923.41 and 923.55 of this part:

(1) The shipment consists of cherries sold for home use and not for resale;

(2) The shipment does not, in the aggregate, exceed 100 pounds, net weight, of cherries; and

(3) Each container is stamped or marked with the words "not for resale" in letters at least one-half inch in height.

(d) *Definitions.* Terms used in the marketing agreement and order shall,

when used herein, have the same meaning as given to the respective term in said marketing agreement and order; "U.S. No. 1" and "diameter" shall have the same meaning as when used in the United States Standards for Grades of Sweet Cherries (7 CFR 51.2646–51.2660); and "face-packed" means that cherries in the top layer in any container are so placed that the stem ends are pointing downward toward the bottom of the container.

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

Dated: June 25, 1976.

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

[FR Doc.76–18975 Filed 6–29–76;8:45 am]

[Docket No. AO–214–A5]

PART 981—ALMONDS GROWN IN CALIFORNIA

Order Amending Order

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of almonds grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of almonds grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of almonds grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order, as amended, effective not later than July 1, 1976. Any delay beyond that date would tend to disrupt the orderly marketing of almonds grown in California. The 1976–77 crop year begins July 1, 1976, and the provisions of this amendatory order should become effective on that date so as to apply to all almonds handled during that crop year. Some provisions, such as that pertaining to quality control, may require rulemaking and, therefore, should be made effective in time to enable the Almond Marketing Board to consider any rulemaking before harvest of almonds begins. Also, another provision revises the operating reserve and refund procedures and specifies how funds collected in the previous crop year may be used on and after July 1.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective July 1, 1976, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Almonds Grown in California" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping almonds covered by the said order, as amended, and as hereby further amended) who, during the period July 1, 1975 through March 31, 1976, handled not less than 50 percent of the volume of such almonds covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period July 1, 1975 through March 31, 1976 (which has been deemed to be a representative period), have been engaged within California, in the production of almonds for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling almonds, shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

1. Section 981.4 is revised to read:

§ 981.4 Almonds.

"Almonds" means (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California, and for the purposes of research includes almond shells and hulls.

2. Section 981.7 is revised to read:

§ 981.7 Edible kernel.

"Edible kernel" means a kernel, piece, or particle of almond kernel that is not inedible.

3. Section 981.8 is revised to read:

§ 981.8 Inedible kernel.

"Inedible kernel" means a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt not easily removed by washing. This definition may be modified by the Board with the approval of the Secretary: *Provided,* That the Board shall submit any recommendation for modification to the Secretary not later than August 1.

4. Section 981.13 is revised to read:

§ 981.13 Handler.

"Handler" means any person handling almonds during any crop year, except that such term shall not include either a grower who sells only almonds of his own production at retail at a roadside stand operated by him, or a person receiving almonds from growers and other persons and delivering these almonds to a handler.

5. Section 981.20 is revised to read:

§ 981.20 Handler carryover.

"Handler carryover" as of any given date means all almonds, wherever located, then held by handlers for their own accounts (whether or not sold) but not including any almond products.

6. Section 981.21 is revised to read:

§ 981.21 Trade demand.

"Trade demand" means the quantity of almonds (kernel weight basis) which commercial distributors and users such as the wholesale, chain store, confectionery, bakery, ice cream, and nut salting trades will acquire from all handlers during a crop year for distribution in the United States, Puerto Rico, and the Canal Zone: *Provided,* That in recommending the salable and reserve percentages for any crop year, the Board may include, with the approval of the Secretary, export outlets for almonds.

7. Section 981.22 is amended:

§ 981.22 Board.

"Board" means the Almond Board of California which is the administrative agency established by this subpart.

8. The center caption preceding § 981.30 is revised to read "Almond Board of California", and "Control" is deleted wherever it appears in the order.

9. Section 981.42 and a new center caption preceding the section are added to read:

QUALITY CONTROL

§ 981.42 Quality control.

(a) *Incoming.* Each handler shall cause to be determined, through the inspection agency, and at handler expense, the percent of inedibile kernels in each variety received by him, and shall report the determination to the Board. The quantity of inedible kernels in each variety in excess of two percent of the kernel weight received, shall constitute a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. The Board, with the approval of the Secretary, may change this percentage for any crop year, may authorize additional outlets, and may establish rules and regulations necessary and incidental to the administration of this provision, including the method of determining inedible kernel content and satisfaction of the disposition obligation. The Board for good cause may waive portions of obligations for those handlers not generating inedible material from such sources as blanching or manufacturing.

(b) *Outgoing.* For any crop year the Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to almonds to be handled or to be processed into manufactured products, as will contribute to orderly marketing or be in the public interest. In such crop year, no handler shall handle or process almonds into manufactured items or products unless they meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

10. Section 981.47 is revised to read:

§ 981.47 Method of establishing salable and reserve percentages.

Whenever the Secretary finds, from the recommendations and supporting information supplied by the Board or from any other available information, that to designate the percentages of almonds during any crop year which shall be salable almonds and reserve almonds would tend to effectuate the declared policy of the act, he shall designate such percentages. Except as provided in § 981.50 the salable and reserve percentages shall each be applied to the kernel weight of almonds received by a handler for his own account during the crop year. In establishing such salable and reserve percentages, the Secretary shall give consideration to the ratio of estimated trade demand (either domestic or domestic plus export, less the handler carryover available to satisfy trade demand plus the desirable handler carryover at the end of the crop year) to the estimated production of marketable almonds (all expressed in terms of kernel weight) or the allocation quantity (marketable production plus almonds diverted to oil or feed when eligible for reserve satisfaction) whichever is applicable; the recommendation submitted to him by the Board; and such other information as he deems appropriate. The total of the salable and reserve percentages established each crop year shall equal 100 percent.

§ 981.49 [Amended]

11. Section 981.49(a) is amended by inserting the word "marketable" before "almonds".

12. Section 981.50 is revised to read:

§ 981.50 Reserve obligation.

Whenever salable and reserve percentages are in effect for a crop year, each handler shall withhold from handling a quantity of almonds having a kernel weight equal to the reserve percentage of the kernel weight of all almonds such handler receives for his own account during the crop year: *Provided,* That any quantity of almonds delivered to outlets such as poultry or animal feed or crushing into oil, in a manner permitting accountability to the Board, shall not be included in such receipts. The quantity of almonds hereby required to be withheld from handling shall constitute, and may be referred to as the "reserve" or "reserve obligation" of a handler. The almonds handled as salable almonds by any handler, in accordance with the provisions of this part, shall be deemed to be that handler's quota fixed by the Secretary within the meaning of section 8a(5) of the act.

13. Section 981.51 is revised to read:

§ 981.51 Requirements for reserve.

Each handler may satisfy his reserve obligation with such almonds specified in the terms of the agency agreement authorized in § 981.67, including all applicable inspection and certification requirements. Any handler who does not become an agent may receive credit by similarly delivering almonds to the Board or its designees. These requirements may be established by the Board, with the approval of the Secretary, and from time to time so modified, and may include grade requirements for reserve almonds delivered to human consumption outlets.

14. Section 981.53 is deleted and § 981.52 is revised to read:

§ 981.52 Holding requirement and delivery.

Each handler shall, at all times, hold in his possession or under his control, in proper storage for the account of the Board, the quantity of almonds necessary to meet his reserve obligation less: (a) Any quantity which was disposed of by him pursuant to § 981.67; and (b) any quantity for which he is otherwise relieved by the Board of responsibility to so hold almonds. Upon demand of the Board reserve almonds shall be delivered to the Board f.o.b. handler's warehouse or point of storage, except that the Board shall not make such demand upon a handler with respect to reserve almonds for which he has agreed to undertake disposition pursuant to § 981.67. Any handler who does not act as agent for the Board in the disposition of reserve almonds shall be subject to the applicable inspection and certification requirements prescribed by the Board pursuant to § 981.67.

§ 981.53 [Revoked]

15. Section 981.61 is revised to read:

§ 981.61 Redetermination of kernel weight.

The Board, on the basis of reports by handlers, shall redetermine the kernel weight of almonds received by each handler for his own account during each crop year through each of the following dates: December 31, March 31, and June 30. Such redetermined kernel weight for each handler shall be the basis for computing his reserve obligation for the crop year through such dates, except that adjustment shall be made for almonds on which the obligation has been assumed by another handler. The redetermined kernel weight of each handler's receipts, as of any date during the crop year, shall be his carryover as of that date plus the weight of almonds delivered or used in products minus the carryover at the beginning of the crop year, the weight on which another handler has assumed the obligations, and the weight delivered to exempt outlets. Weights used in such computations for various classifications of almonds shall be: (a) For unshelled almonds, the kernel weight computed by application of shelling ratios authorized pursuant to § 981.62; (b) for shelled almonds, the net weight; and (c) for shelled almonds used in production of almond products, the net weight of such almonds.

16. Section 981.62(a) is revised to read:

§ 981.62 Varietal shelling ratios for unshelled almonds.

(a) The varietal shelling ratios applicable to unshelled almonds for determination of kernel weight are as follows:

Varieties:	Percent
Jordanolo	60
Kapareil	60
Merced	60
Nonpareil	60
Thompson	60
Bigelow	55
Harpareil	55
Bureka	54
Baker	53
Trembath	53
Ballico	50
Davey	50
IXL	50
Long IXL	50
Ne Plus Ultra	50
Ruby	50
Smith (Smith's XL)	48
Lewelling (Lewelling's Prolific)	47
Walton	41
Drake	40
Emerald	40
Mission	40
Ripon	40

Varieties:	Percent
Standard	38
Suitana	36
Peerless	35
Tarragona	33
Hardshell	30
Bidwell	30

* * * * *

§ 981.66 [Amended]

17. Section 981.66 is revised by substituting the word "salable" for the word "domestic" in the title of § 981.66(c), and by revising the last sentence of § 981.66(d) to read: "The Board may dispose of reserve almonds in non-competitive outlets in any crop year in which the quantity exceeds that needed for export or the export quantity is included in salable almonds".

18. Section 981.81 (b) and (c) are revised to read:

§ 981.81 Assessment.

* * * * *

(b) Refunds. Any money collected as assessments for either the administrative (maintenance and functioning) or research activities of the Board and not used for the expenses of the applicable crop year, may be used in paying the Board's expenses of the first four months of the succeeding crop year. No later than the fifth month the amount not expended from assessments collected for administrative-research in the previous crop year shall be retained in the operating reserve fund. Any amounts, not credited pursuant to § 981.41 for a crop year may be used by the Board for its marketing promotion expenses of the succeeding crop year, and any unexpended portion of those amounts at the end of that crop year shall be retained in the marketing promotion portion of the operating reserve fund. Any funds in each portion of the operating reserve fund in excess of the level authorized pursuant to paragraph (c) of this section shall be refunded to handlers or used to reduce the assessment rate of the subsequent crop year, as the Board may determine. Each handler's share of a refund shall be the amount by which his payment of assessments exceeds his pro rata share of the two major classifications of Board expenses. For the purpose of computing any refund from the marketing promotion portion, each handler's payment of assessments shall include any amount credited to the handler pursuant to § 981.41. In lieu of a refund, each handler may have the amount due him credited to his assessment obligation of the crop year in which the amount would be refunded.

(c) *Reserves.* The Board may maintain an operating reserve fund consisting of an administrative-research portion and a marketing promotion portion. The amount in each portion shall not exceed approximately six-months' budget for the activity area or such lower amount as the Board may establish with the approval of the Secretary: *Provided,* That this limitation shall not restrict the temporary retention of excess funds for the purpose of stabilizing or reducing the assessment rate of a crop year. To the extent that funds from current crop year assessments are inadequate, funds in the operating reserve may be used for the authorized activities of the crop year. Funds so used, and not exceeding the six-month limitation, shall be replaced to the extent practicable from assessments subsequently collected for the crop year.

* * * * *

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

Effective date: July 1, 1976.

Signed at Washington, D.C., on June 25, 1976.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.76-18917 Filed 6-29-76;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Board Employees and Federal Reserve Banks; Correction

In FR document 76-14362 appearing at page 20395 of the issue for Tuesday, May 18, 1976, the section number appearing in line 21 of the preamble and line 12 of § 265.2(c)(18) should read § 78c(a)(3)(a)(34)(B).

Board of Governors of the Federal Reserve System, June 24, 1976.

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

[FR Doc.76-18947 Filed 6-29-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release 35-19575]

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Form of Notice of Filing of Certain Applications and Declarations

The Securities and Exchange Commission has, effective immediately, deleted the form of notice regarding the filing of certain applications and declarations from 17 CFR 250.23(e) and has rescinded the related form [17 CFR 259.111]. The text is not hereby amended. Since § 250.23(e) is a procedural rule, the amendment is exempt from publication of notice provisions of 5 U.S.C. § 553(e).

§ 250.23 [Amended]

1. In § 250.23, paragraph (e) is amended by deleting the form annexed thereto.

§ 259.111 [Removed]

Section 259.111 is deleted entirely.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 16, 1976.

[FR Doc.76-18880 Filed 6-29-76;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS: GENERAL

PART 290—CONTROLLED DRUGS

Subpart C—Requirements for Specific Controlled Drugs

METHADONE IN THE MAINTENANCE TREATMENT OF NARCOTIC ADDICTS; CFR CORRECTION

In the Code of Federal Regulations for 1976 containing Parts 200 to 299 (21 CFR Parts 200 to 299), the following correction is made on page 85: In § 290.35 *Methadone in the maintenance treatment of narcotic addicts* (21 CFR 290.35), the reference in lines 15 and 16 of paragraph (b) is corrected by changing the phrase "in proposed 21 CFR 1319.505" to read "in § 310.505 of this chapter."

Dated: June 23, 1976.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.76-18882 Filed 6-29-76;8:45 am]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 522—IMPLANTATION OR INJECTABLE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Prostalene Solution

The Food and Drug Administration has evaluated a new animal drug application (100-254V), filed by Syntex Laboratories, Inc., Palo Alto, CA 94304, proposing the safe and effective use of Prostalene solution in mares for the control of estrus. The application is approved June 30, 1976.

The Commissioner of Food and Drugs is amending Part 522 (21 CFR Part 522) to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner (21 CFR 5.1) (Recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 522 is amended by adding new § 522.2012 to read as follows:

§ 522.2012 Prostalene solution.

(a) *Specifications.* Each milliliter of sterile solution contains 1 milligram of prostalene.

(b) *Sponsor.* No. 000033 in § 510.600(c) of this chapter.

(c) *Conditions of use—Horses.* (1) It is used in mares for the control of estrus.

(2) It is administered at a dose of 5 micrograms per kilogram of body weight as a single subcutaneous injection.

(3) Not for use in horses intended for food.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation shall be effective June 30, 1976.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: June 23, 1976.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.76-18885 Filed 6-29-76;8:45 am]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lincomycin

The Food and Drug Administration has evaluated a new animal drug application (97-505V) filed by The Upjohn Co., Kalamazoo, MI 49001, proposing safe and effective use of a 20 gram per pound lincomycin premix for the manufacture of a complete swine feed that is to be used for the treatment and control of swine dysentery. The application is approved, effective July 30, 1976.

The Commissioner of Food and Drugs is amending Part 558 (21 CFR Part 558) to reflect this approval.

Lincomycin as the sole drug meets the uniform criteria set forth in 1971 Bureau of Veterinary Medicine memoranda for administrative waiver of the ministerial requirements of section 512(m) of the act. The pertinent provisions of the memoranda indicate that waiver is appropriate if:

1. The feeding of 1.5X to 2X the level of the product in the finished feed does not have an impact on the tissue residue picture, i.e., an impact on an existing withdrawal period or tolerance.

2. The product is not a known carcinogen or is not classed with a family of known carcinogens.

3. Appropriate documentation covering animal safety is on file. This will not require additional generation of data in that this documentation is by definition a part of the new animal drug application (NADA).

4. The margin of safety to the animal and safety to the consumer is such that the product label does not have to contain a statement such as "Use as the sole source of * * *."

5. Data are on file to demonstrate that the product is efficacious over the approved range. This data should generally satisfy current standards for the demonstration of efficacy.

6. Except under special circumstances, the product has been used at least 3 years in the target species without significant complaints related to or associated with it. Applications of this criterion require a review of the available Drug Experience Reports.

The memoranda make explicit that because waiver of the ministerial requirements of section 512(m) is permitted only for specific efficacy claims or at specific levels of the drugs, distinct products with corresponding labeling for those claims or levels should exist. This is necessary in order to cover those premixes that can be made into finished feeds with various concentrations of drugs.

The foregoing criteria established in the 1971 memoranda constitute an interim agency policy that is under review. The Bureau of Veterinary Medicine is preparing a proposed regulation for publication in the FEDERAL REGISTER, based on the criteria listed above, governing waiver of the 512(m) requirements for the finished feed. The approval which is the subject of this notice waives the ministerial requirements of section 512(m) of the act for finished feeds manufactured from feed supplements because the data demonstrate that 26 times the highest approved feeding level produces no residue above the established tolerance. In waiving the ministerial requirements of section 512(m), the agency has not waived the current good manufacturing practice regulations under Part 225 (21 CFR Part 225) for feed mills mixing such feeds.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action would not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. Copies of the Food and Drug Administration environmental impact assessment are on file with the Hearing Clerk, Food and Drug Administration.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1) (Recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), § 558.325 is amended by revising paragraph (b) to include an additional premix level; by revising the special considerations statement in paragraph (e); and by editorially revising in paragraph (f) the introductory text of paragraph (f)(1), by redesignating (f)(2) as (f)(3) and revising the introductory text of the redesignated paragraph (f)(3), and by inserting new paragraph (f)(2), to read as follows:

§ 558.325 Lincomycin.

* * * * *

(b) *Approvals.* (1) Premix level of 4 grams per pound has been granted to No. 000009 in § 510.600(c) of this chapter for use as provided in paragraphs (f)(1) and (f)(3) of this section.

(2) Premix level of 20 grams per pound has been granted to No. 000009 in § 510.600(c) of this chapter for use as provided in paragraph (f)(2) of this section.

* * * * *

(e) *Special considerations.* (1) Complete broiler feeds containing lincomycin as the sole drug and conforming to the requirements of paragraph (f)(1) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(2) Finished swine feed containing lincomycin as the sole drug, processed from feed supplements that contain up to 2,600 grams of lincomycin per ton, and conforming to the requirements of paragraph (f)(2) of this section are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

(f) * * * (1) *Broilers*—It is used in complete feed as follows:

* * * * *

(2) *Swine*—It is used in complete feed as follows:

(i) *Amount per ton,* 40 grams.

(*a*) *Indications for use.* For control of swine dysentery.

(*b*) *Limitations.* Feed as sole ration; for use in swine on premises with a history of swine dysentery but where symptoms have not yet occurred; not for use in breeding swine; withdraw 6 days before slaughter.

(ii) *Amount per ton.* 100 grams; 40 grams.

(*a*) *Indications for use.* For treatment and control of swine dysentery.

(*b*) *Limitations.* Feed 100 grams per ton for 3 weeks or until signs of disease disappear, followed by 40 grams per ton; feed as sole ration; not for use in breeding swine; withdraw 6 days before slaughter.

(iii) *Amount per ton.* 100 grams.

(*a*) *Indications for use.* For treatment of swine dysentery.

(*b*) *Limitations.* Feed as sole ration for 3 weeks or until signs of disease disappear; not for use in breeding swine; withdraw 6 days before slaughter.

(3) Lincomycin may also be used for broilers in combination with:

* * * * *

Effective date. This regulation shall be effective June 30, 1976.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: June 22, 1976.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.76-18886 Filed 6-29-76;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER E—PLANNING

PART 470—HIGHWAY SYSTEMS

PART 473—FEDERAL-AID URBAN SYSTEM

Federal-Aid Highway Systems (Other Than Urban); Establishment of System; Deletions

• The Purpose of this document is to delete subparts no longer authorized by law after June 30, 1976.•

On Friday, September 12, 1975, at 40 F.R. 42344, the Federal Highway Administration published a regulation (23 CFR, Part 470—Highway Systems—Federal-Aid Highway Systems) establishing certain policies and procedures and continuing certain other policies and procedures, effective July 1, 1976, in connection with implementation of Federal-aid highway system realignment requirements in the Federal-Aid Highway Act of 1973 (Pub. L. 93–87).

The preamble to the regulation explained that two existing regulations would be deleted from the Code of Federal Regulations after June 30, 1976, and that the deleted regulations would be replaced by the regulations accompanying the preamble.

Accordingly, 23 CFR Part 470, Subpart A and 23 CFR Part 473, Subpart A are hereby deleted from the Code of Federal Regulations.

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.

Effective date: June 30, 1976.

Issued on June 22, 1976.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.76–18942 Filed 6–29–76;8:45 am]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R–76–297]

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENTAL BLOCK GRANT PROGRAM

Computation of Time Periods

On February 19, 1976, the Department of Housing and Urban Development published in the FEDERAL REGISTER (41 FR 7515) a notice of proposed rule-making for the purpose of providing uniform guidance for computing time periods governing Environmental Review Procedures under Title I of the Housing and Community Development Act of 1974 and for removing existing provisions which have been found to cause delays and to be unnecessary. Interested persons were given until March 19, 1976, to submit written comments. All comments received were given careful consideration and the change which has been incorporated in the final regulation is based upon suggestions received from the public.

Of the formal comments received from the public, only one expressed opposition to the proposal to include non-business days in the computation of time periods other than notice periods, favoring, instead, that all time periods be extended by the exclusion of non-business days. Several commenters, endorsing the proposed change, suggested that it also apply to notice periods. However, the exclusion of non-business days in computing the time period for the giving of notice is deemed necessary, in order to assure that all affected parties receive the benefit of the full period provided for such notice.

With the exceptions noted, the proposed change was endorsed by the commenters. A number of commenters, however, expressed some confusion respecting the retroactivity provision, particularly as it referred to an "application." HUD has concluded that this reference to the application is confusing, since many environmental reviews are carried out and completed both before and after the filing of an application. It was the Department's intent to make this change effective in the same manner as it would have been effective had it been included in the clarifications and corrections to 24 CFR Part 58 which were published on July 16, 1975. Accordingly, the last sentence of the change has been revised to more clearly reflect its intended meaning.

Section 104(h) of the Housing and Community Development Act of 1974 requires that regulations concerning environmental review be issued only after consultation with the Council on Environmental Quality. Such consultation with respect to this amendment has been conducted. Also, a finding of inapplicability with respect to any environmental impact of this amendment has been made in accordance with HUD Handbook 1390.1 (38 FR 19182). A copy of that finding is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10141, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, Title 24, Part 58 is amended as follows:

§ 58.2 Time periods.

* * * * *

(b) Each calendar day occurring in such time period shall be counted, except no Saturday or Sunday and no legal holiday under Federal or State law on which applicant does not maintain normal business hours shall be included in the five (5) day time period required pursuant to § 58.30(a). This computation shall apply to any such time period counted after July 15, 1975.

(c) [Reserved]

(Sec. 7(d) of the Department of HUD Act, (42 U.S.C. 3535(d)).)

Effective date: This amendment shall be effective on June 30, 1976.

(It is hereby certified that the economic and inflationary impact of these regulations have been carefully evaluated in accordance with OMB Circular A–107.)

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.76–18996 Filed 6–29–76;8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS

PART 221—OPERATION AND MAINTENANCE CHARGES

San Carlos Irrigation Project, Ariz.

On page 20688 of the FEDERAL REGISTER of Thursday, May 20, 1976, there was published a notice of proposal to modify § 221.63 *Assessment, Joint Works* of Title 25, Code of Federal Regulations, dealing with operation and maintenance assessments against the irrigable lands of the San Carlos Irrigation Project, Arizona.

Interested persons were given until June 11, 1976 to submit written comments, suggestions, or objections with respect to the proposed amendments. Unfavorable comments were received from the San Carlos Irrigation and Drainage District which were given careful consideration, but to comply with the Comptroller General ruling that irrigation pumping costs must be a charge against irrigation operation and maintenance, the proposed revisions are hereby adopted without change as set forth below:

The revised section will read as follows:

§ 221.63 Assessment, joint works.

(a) Pursuant to the act of Congress approved June 7, 1924 (43 Stat. 476), and supplementary acts, the repayment contract of June 8, 1931, as amended, between the United States and the San Carlos Irrigation and Drainage District, and in accordance with applicable provisions of the order of the Secretary of the Interior June 15, 1938 (§§ 221.69a–221.69m), the cost of the operation and maintenance of the Joint Works of the San Carlos Indian Irrigation Project for the fiscal year 1978 is estimated to be $1,185,000 and the rate of assessment for the said fiscal year and subsequent fiscal years until further order, is hereby fixed at $11.85 for each acre of land.

JOHN ARTICHOKER, Jr.,
Area Director.

[FR Doc.76–18921 Filed 6–29–76;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 654–76]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart O—Office of Managemeent and Finance: International Criminal Police Organization National Central Bureau

Under 22 U.S.C. 263(a), the Attorney General is authorized to accept and maintain membership in the International Criminal Police Organization (INTERPOL), on behalf of the United States, and to designate those departments and agencies which may participate in the United States' representation with INTERPOL. By previous designation from the Attorney General, the Department of the Treasury is the representative of the United States to INTERPOL. However, this designation is being withdrawn and the Department of Justice is reassuming responsibility for the liaison and central operational activities related to INTERPOL.

The purpose of this order is to establish and provide for the activities related to INTERPOL within the Department of Justice.

By virtue of the authority vested in me by 5 U.S.C. 301, 22 U.S.C. 263(a), and 28 U.S.C. 509 and 510, Section 0.75 of Subpart O of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by adding a new paragraph (r) to read as follows:

§ 0.75 Policy functions.

* * * * *

(r) Establish and direct liaison and central operational activities related to the International Criminal Police Organization (22 U.S.C. § 263(a)).

Dated: June 24, 1976.

EDWARD H. LEVI,
Attorney General.

[FR Doc.76–18966 Filed 6–29–76;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER P—RECORDS

PART 285—RELEASE AND AUTHENTICATION OF COPIES OF OFFICIAL RECORDS

Revocation

32 CFR Part 285 is revoked. The provisions of this part are now contained in 32 CFR Part 286.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JUNE 28, 1976.

[FR Doc.76–19101 Filed 6–29–76;8:45 am]

CHAPTER VI—DEPARTMENT OF THE NAVY

PART 706—NAVIGATIONAL LIGHT WAIVERS

Collision Prevention

33 U.S.C. 360 and 1052 provide that the requirements of the Regulations for Preventing Collisions at Sea, 1960, the Inland Rules, the Great Lakes Rules and the Western River Rules as to number, position, range of visibility, or arc of visibility of lights required to be displayed by vessels shall not apply to any vessel of the Navy when the Secretary of the Navy shall find or certify that, by reason of special construction, it is not possible for such vessel or class of vessels to comply with the statutory provisions as to navigation lights.

A recent study indicates that the design characteristics of the Replenishment Oiler *Roanoke* (AOR 7) preclude the installation of the upper of the two 20-point white lights (masthead and range lights) as an unbroken white light as required by Rule 2(a) of the Regulations for Preventing Collisions at Sea, 1960 (33 U.S.C. 1062(a)).

The Secretary of the Navy hereby certifies that Replenishment Oiler *Roanoke* (AOR 7) is a naval vessel of special construction, and with respect to the obscuration of the upper of the two 20-point white lights, it is not possible to comply with the requirements of the statutes and regulations enumerated in 33 U.S.C. 360 and 1052.

It is further certified that installation of the said navigation light at frame 52 at a height of 22.6 meters (74 feet) above the main deck, which will result in an obscuration of approximately 0 degrees and 37 minutes from right ahead, constitutes the closest compliance with the applicable statutes and regulations found to be feasible. Table Two of 32 CFR 706.2 is amended to reflect this determination and waiver. It is further determined, in accordance with 32 CFR 296.5(c) and 701.57(b), that publication of this amendment for public comment prior to adoption is impracticable and unnecessary, because it is based on technical findings that the placement of lights of this ship in a manner different from that prescribed therein will adversely affect the ship's ability to perform its military functions.

Accordingly, effective on June 29, 1976, 32 CFR 706.2 is amended by adding, to Table Two thereof, the following Note 16:

§ 706.2 Certifications of the Secretary of the Navy under 33 U.S.C. 360 and 1052.

* * * * *

16. On Replenishment Oiler AOR 7 the after masthead light [based on International Rule 2(a) and Inland Article 2(3)] will have an arc of obscuration of .6° when viewed from right ahead.

Dated: June 8, 1976.

J. WILLIAM MIDDENDORF II,
Secretary of the Navy.

[FR 76–18889 Filed 6–29–76;8:45 am]

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Miscellaneous Amendments

Pursuant to the authority conferred in 3 U.S.C. 301, 5 U.S.C. 301, 10 U.S.C. 815, 5031 and 5148, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 719. The amendments relate entirely to internal naval management and largely reflect nonsubstantive changes adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is not required under the rulemaking provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 719 is therefore amended as follows:

1. The authority citations were amended to read as follows:

AUTHORITY: 3 U.S.C. 301; 5 U.S.C. 301; 10 U.S.C. 815, 5031, and 5148; 32 CFR 700.206 and 700.1202.

2. Section 719.101 is amended as follows:

a. Paragraph (e)(2) is revised and in paragraph (g), in the ninth line, the words "NAVPERS 2696 and NAVMC 10132PD" are changed to "NAVPERS 1626/7 (Rev. 5–72) and NAVMC 10132PD (Rev. 7–66).

§ 719.101 General provisions.

* * * * *

(e) * * *

(2) *Punishments involving restraint and extra duties.* The punishments of arrest in quarters, correctional custody, confinement on bread and water or diminished rations, extra duties, and restriction, if unsuspended, take effect when imposed upon an accused attached to or embarked in a vessel. When any such punishments are authorized for, and are imposed upon, an accused not attached to or embarked in a vessel, such punishments, if unsuspended, will take effect when imposed; provided however, that if an accused indicates an intent to appeal his punishment at the time of imposition of nonjudicial punishment, such punishment will be stayed pending completion of such appeal, unless the accused requests otherwise. If an accused does not indicate an intent to appeal at the time of imposition of nonjudicial punishment but later indicates an intent

to appeal in a timely manner, as prescribed by paragraph (f) of this section, further serving of punishment will be stayed pending completion of such appeal, unless the accused requests otherwise. As with forfeiture and detention, any prior punishment involving restraint will be completed before the second begins to run. In addition, commanding officers and officers in charge at sea may, when the exigencies of the service require, defer execution of correctional custody and confinement of bread and water or diminished rations for a reasonable period of time, not to exceed fifteen days, after imposition. When correctional custody is to be served in a regular confinement facility, the conditions of service and the provisions for release therefrom shall be as prescribed in the Corrections Manual. Otherwise, correctional custody shall be imposed and administered in accordance with SEC NAVINST 1640.7 series.

* * * * *

3. Paragraph (a)(3) of § 719.103 is amended to provide as follows:

§ 719.103 Designation of additional convening authorities.

(a) * * *

(3) The Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, are hereby designated and empowered to exercise limited general court-martial jurisdiction for the purpose of performing the functions described in paragraphs 100e, 102, and 107, MCM. See § 719.129(a)(2) concerning the clemency powers of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas.

* * * * *

4. Paragraph (e)(1) of § 719.107 is amended to provide as follows:

§ 719.107 Restrictions on exercise of court-martial jurisdiction.

(e) * * *

(1) *Policy.* A person in the naval service who has been tried in a domestic or foreign court, whether convicted or acquitted, or whose case has been "diverted" out of the regular criminal process for a probationary period, or whose case has been adjudicated by juvenile court authorities, shall not be tried by court-martial for the same act or acts, except in those unusual cases where trial by court-martial is considered essential in the interests of justice, discipline, and proper administration within the naval service. Such unusual cases shall not be referred for trial without specific permission as provided below.

* * * * *

5. Paragraph (a) and (b)(1)(iii) of § 719.114 is amended to provide as follows:

§ 719.114 Pretrial agreement in general and special courts-martial.

(a) *Legality of pretrial agreements.* Under the provisions of the Uniformed Code of Military Justice, it is legal and proper for the convening authority to make a pretrial agreement as to charges and specifications upon which the accused will be tried and/or the maximum sentence which will be finally approved by the convening authority if the accused pleads guilty and his plea of guilty is accepted by the military judge and is not permitted to be withdrawn. Experience has shown that opportunities for advanced planning, savings in money and manpower, and a more expeditious administration of justice can be effected by such agreements.

(b) * * *

(1) * * *

(iii) Except for the military judge, under no circumstance will the court be officially informed of any negotiations between counsel and the convening authority on the subject of a pretrial agreement; of any such agreement existing at the time of trial; or of any such agreement made and later rejected by the accused to permit a plea of not guilty. Precaution shall also be taken to prevent the court, in so far as possible from obtaining unofficial knowledge of the foregoing. A pretrial agreement will not preclude the accused from presenting matter in mitigation and extenuation; and counsel for the accused has a continuing duty, despite such an agreement, to vigorously represent the accused before the court with respect to the sentence to be adjudged. The military judge is permitted to examine in toto the pretrial agreement and to inquire into the accused's understanding of such agreement, whether hearing the case alone or with members.

* * * * *

6. Paragraph (c)(2) of § 719.116 is amended to provide as follows:

§ 719.116 Preparation and forwarding of charges.

* * * * *

(c) * * *

(2) *Contribution to basic allowance for quarters.* The provision of law which required enlisted members in pay grade E–4 (4 years' or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired June 30, 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective June 30, 1973. Therefore, the $40.00 previously subtracted when computing the net amount of pay subject to forfeiture or detention for an enlisted person in pay grade E–4 (4 years' or less service) or below, shall no longer be deducted. Accordingly, that section on page 1 of the charge sheet, DD form 458, entitled: "Contribution to family or quarters allowance [MCM 126h(2)]" should be marked "not applicable."

* * * * *

7. Paragraph (a) of § 719.119 is amended to provide as follows:

§ 719.119 Forfeitures, detentions, fines.

(a) *Deduction of contribution to basic allowance for quarters no longer required.* The provision of law which required an enlisted member on pay grade E–4 (4 years' or less service) or below to establish an allotment for his dependents (Q allotment) in order to be entitled to basic allowance for quarters expired June 30, 1973, and the Assistant Secretary of Defense (Comptroller) directed that all Q allotments be stopped, effective June 30, 1973. Therefore, the $40.00 previously substracted when computing the net amount of pay subject to forfeiture or detention for an enlisted person in pay grades E–4 (4 years' or less service) or below, shall no longer be deducted. With regard to a service member with dependents, however, the effect of any forfeiture or detention of pay on his ability to discharge his responsibility for the care of his dependents is a factor in considering the amount of forfeiture or detention.

* * * * *

In § 719.123 paragraphs (c) and (f) are revised and paragraph (g) is added to provide as follows:

§ 719.123 Action on courts-martial by convening authority.

* * * * *

(c) *Sentences including a punitive discharge.* In order that the best interests of the service as well as those of the accused may be served, the convening authority, in those cases where the sentence as approved by him extends to a punitive discharge, whether or not suspended, shall include in his initial action a brief synopsis of the accused's conduct record during the current enlistment or current enlistment as extended. This synopsis should include in chronological order: Dates, nature of offenses committed, sentences adjudged and approved, and nonjudicial punishment imposed. In those cases in which the accused's conduct record includes a conviction by summary court-martial which resulted in confinement at hard labor, the synopsis should include an affirmative statement that the accused was represented by counsel at such court-martial, or if the accused was not so represented, the synopsis should contain a statement that the conviction was not considered by the convening authority in determining his action on the record. The synopsis should also include medals and awards, commendations, and any other information of a commendable nature. Although not required, similar action may, if circumstances are deemed appropriate, be taken in other cases. The foregoing requirement does not in any way affect the legal requirements as to the admissibility of records of previous convictions during the trial itself. See also paragraph (f) of this section.

* * * * *

(f) *Cases involving convictions of larceny or other offenses involving moral turpitude.* If a punitive discharge has been approved, whether or not suspended, in a case involving conviction of larceny or other offense or offenses involving moral turpitude, the convening authority shall include in his action on the record facts which tend to extenuate,

mitigate, or aggravate the offense or offenses and which do not appear in the court record or in the papers accompanying the same. In all cases in which the information to be so set forth in the action of the convening authority is not exclusively extenuating or mitigating, the convening authority shall refer a copy of the information to the accused before taking action on the case, and shall afford the accused an opportunity to rebut any part or portion of the information. A comment that such opportunity to rebut was afforded shall be included in the action of the convening authority, and any statement made by the accused in rebuttal shall be appended to such action. See paragraph 85b, Manual for Courts-Martial for limitations on consideration of adverse matter.

(g) *Cases in which posttrial confinement or restraint as a result of a sentence by court-martial exceeds 90 days before promulgation of the convening authority's action.* If an accused is confined or restrained as the result of a sentence by court-martial, and posttrial confinement or restraint exceeds 90 days before promulgation of the action of the convening authority, the Government must dismiss the charges unless "really extraordinary circumstances" caused the delay in completion and promulgation of the convening authority's action. Therefore, to assist in meeting the Government's heavy burden on appeal to show that "really extraordinary circumstances" caused such delay, convening authorities, in appropriate cases, should document the circumstances that caused delay in excess of 90 days, if such circumstances existed.

§ 719.124 [Amended]

9. In paragraph (a)(5)(iii) of § 719.-124, first line, the words "Certified copies;" are changed to "Duplicate originals or certified copies." In paragraph (a)(5)(iii)(e) of § 719.124, first line, the words "Senior Member" are changed to "President". In paragraph (a)(5)(iv) of § 719.124, first line, the words "Plain copies" are changed to "Duplicate originals, certified copies, or plain copies." Paragraph (a)(4) of § 719.124 is amended to provide as follows:

(a) * * *

(4) *Form.* The form of a promulgating order is prescribed in appendix 15, Manual for Courts-Martial. In copying and including the action of the convening authority in the promulgating order, any synopsis of the accused's record and/or circumstances of the offense contained in the convening authority's action pursuant to § 719.123(c) and/or § 719.123(f) shall also be copied and included in the promulgating order. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case the name, grade, and title of the subscribing officer, including his organization or unit, shall be given. Where a subordinate officer signs by direction, his name, title, and organization shall be followed by the words "By direction of (name, grade, title, and organization of issuing officer)." A duplicate original of a promulgating order is a carbon copy as complete as the original in all respects, including the signature of the officer who signed the original, or an identical copy made by photographic or other duplicating process. A certified copy of a promulgating order is a copy bearing the statement "Certified to be a true copy" over the signature, grade, and title of an officer, or of an enlisted man in the Legalman rating (Navy), or in legal occupational fields (Marine Corps), of grade E–7 or above, who had been designated in writing by the officer issuing the promulgating order.

10. Section 719.128 is amended to provide as follows:

§ 719.128 Criminal activity, disciplinary infractions, and court-martial report.

Officers exercising general court-martial authority shall submit semiannually to the Judge Advocate General NAVJAG Form 5800/9 Criminal Activity, Disciplinary Infractions, and Court-Martial Report (Rev. 7–72). RCS JAG 5800.4A, NAVJAG Form 5800/9A Supplemental Report to the Criminal Activity, Disciplinary Infractions, and Court-Martial Report (Rev. 7–72) is to assist officers exercising court-martial authority in the collection of data from subordinate commands. RCS JAG 5800.4B. These forms containing sample entries are set forth in Appendix A–1–i of the Manual of the Judge Advocate General.

11. Paragraph (a)(2) of § 719.129 is amended to provide as follows:

§ 719.129 Remission and suspension.

(a) * * *

(2) *Authority of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas.* Authority of the Commanding Officer, U.S. Naval Station, Norfolk, Virginia, and the Commanding Officer, Marine Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas, to take action pursuant to Article 74(a), Uniform Code of Military Justice, other than remission or suspension of any part or amount of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge, is limited to the following:

(i) Effecting actions directed by the Secretary following clemency review.

(ii) Remission of uncollected forfeitures in the cases of court-martial prisoners who are to be returned to duty.

(iii) Remission of confinement, not in excess of five days, for the purpose of facilitating administration by adjusting dates of transfer upon completion of confinement. Early releases in excess of five days may be granted when specifically authorized by the Chief of Naval Personnel for Navy prisoners and the Commandant of the Marine Corps for Marine Corps prisoners.

(iv) In the event of an emergency where, in the opinion of the commanding officer, the requirement to remit additional confinement or a punitive discharge is of such immediate nature as to preclude the normal or urgent processes of clemency as provided by SECNAVINST 5815.3 series, the commanding officer may take such action following report of the circumstances to, and having received concurrence in such action of, the Secretary of the Navy (Naval Clemency and Parole Board).

(v) Such other authority as may be specifically delegated in writing by the Secretary.

12. Section 719.130 is revised to provide as follows:

§ 719.130 Effective date of confinement and forfeitures when previous sentence not completed.

(a) *Vacation of suspended general court-martial sentence or of suspended special court-martial sentence including a bad conduct discharge.* Before the vacation of the suspension of any general court-martial sentence, or of a special court-martial sentence which, as approved, includes a bad conduct discharge, the officer having special court-martial jurisdiction over the probationer shall follow the procedures outlined at paragraph 97b, Manual for Courts-Martial.

(b) *Vacation of suspended special court-martial sentence including confinement, but not including a bad conduct discharge, or of suspended summary court-martial sentence including confinement.* Before the vacation of the suspension of a special court-martial sentence which, as approved, includes confinement, but not a bad conduct discharge, or of a summary court-martial sentence which, as approved, includes confinement, the officer having authority to convene, for the command in which the probationer is serving or assigned, a court of the kind that imposed the sentence shall cause a hearing to be conducted on the alleged violation of probation. The hearing shall be conducted in accordance with paragraph 97b, Manual for Courts-Martial, and the probationer shall be accorded the same right to counsel at the hearing as he was entitled to at the court-martial which imposed the sentence. Such counsel need not be the same counsel who originally represented the probationer.

13. Paragraph (a) of § 719.137 is amended to provide as follows:

§ 719.137 Financial responsibility for costs incurred in support of courts-martial.

(a) *Travel, per diem, fees, and mileage.* (1) The costs of travel and per diem of military personnel and civilian employees of the Department of the Navy, but excluding that of personnel attached to the office of the Officer in Charge, U.S. Navy-Marine Corps Judiciary Activity, and branch offices thereof, when acting as military judges of general courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel attached to the office of the Officer in Charge, U.S. Navy-Marine Corps Judiciary Activity, and branch offices thereof,

when acting as military judges of general courts-martial will be charged to the operation and maintenance allotment of the Judge Advocate General.

(2) The costs of fees and mileage of civilians other than employees of the Department of the Navy will be charged to the operating budget which supports the temporary additional duty travel funds of the appropriate Navy or Marine Corps convening authority. See change 17, Navy Comptroller Manual, Volume VIII, paragraph 075145.

* * * * *

14. Paragraph (a) of § 719.141 is amended to provide as follows:

§ 719.141 Courts-martial forms.

(a) *List.* The forms listed below are used in courts-martial by the naval service:

STD 1156, Public Voucher for Fees and Mileage of Witnesses
STD 1157, Claim for Fees and Mileage of Witness
DD 453, Subpoena for Civilian Witness
DD 454, Warrant of Attachment
DD 455, Report of Proceedings to Vacate Suspension
DD 456, Interrogatories and Depositions
DD 457, Investigating Officer's Report
DD 458, Charge Sheet
DD 490, Verbatim Record of Trial
DD 491, Summarized Record of Trial
DD 493, Extract of Military Records of Previous Convictions
DD 494, Court-Martial Data Sheet (Optional)
DD 1722, Request for Trial Before Military Judge Alone
NAVJAG, 5800/9 Criminal Activity, Disciplinary Infractions and Court-Martial Report (Rev. 7-72) and 5800/9A Supplemental Report
NAVJAG, 5813/1 Court-Martial Data (Rev. 11-72)
NAVJAG, 5813/2 Court-Martial Case Report (Rev. 1-73)

15. Section 719.150 is amended to provide as follows:

§ 719.150 Court-Martial case report.

The form NAVJAG 5813/2, Court-Martial Case Report (Rev. 1-73), is designed to serve as a statistical source for planning purposes and to afford the Judge Advocate General an early source of information regarding cases which may evoke public or Congressional interest. RSC JAG 5813.1. A Case Report will be submitted by all military judges of the Navy-Marine Corps Trial Judiciary. Supplies of NAVJAG Form 5813/2 (Rev. 1-73) are available in the Forms and Publications Segment of the Navy Supply System under Stock Number S/N 0105-100-8160. A form containing sample entries is set forth in Appendix A-1-0 of the Manual of the Judge Advocate General.

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General, (Civil Law).

[FR Doc.76-18891 Filed 6-29-76;8:45 am]

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031 and 5148, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 720. New sections 720.15, 720.16, and 720.17 are added to Part 720. The amendments relate entirely to internal naval management and personnel practices and largely reflect nonsubstantive changes adopted in the manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is not required under the rulemaking provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 720 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

2. Section 720.2 is amended to provide as follows:

§ 720.2 Delivery when personnel beyond territorial limits of requesting State.

(a) *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, upon compliance with the provisions of this part and §§ 720.5, 720.6, and 720.9 and subject to the exceptions in § 720.8 to deliver such person for the purpose of making him amenable to prosecution. The serviceman may be delivered upon formal and informal waiver of extradition in accordance with paragraph (b), or upon presentation of a fugitive warrant, in which case the procedures of paragraph (c) apply.

(b) *Waiver of extradition.* (1) Any person may waive formal extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that suggested in § 720.16.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in paragraph (c) of this section.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after execution.

(4) When an individual declines to waive extradition, the nearest naval legal service office or Marine Corps Staff Judge Advocate shall be informed and shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, without the permission of the Secretary of the Navy (Judge Advocate General), until the matter of extradition is resolved.

(c) *Fugitive warrants* (1) A fugitive warrant, as used in this part is a warrant for the arrest of an individual issued by a State court of competent jurisdiction. Normally, a State requesting delivery of a serviceman from another State will issue a fugitive warrant to the State where the serviceman is located.

(2) Upon issuance of a fugitive warrant by the requesting State to the State in which the serviceman is located, the latter State will normally request delivery of the serviceman to local State authorities. Delivery to local State officials should be arranged by Navy or Marine Corps officers designated in paragraph (a) of this section and subject to the conditions of § 720.8 and (c) paragraph (3) and (4) of this section.

(3) Upon receipt of such a request for delivery of a serviceman under fugitive warrant to such State authorities, if such serviceman voluntarily waives extradition, the provisions of paragraph (b) of this section apply. If waiver is refused, the serviceman, after delivery to local State authorities, will then have the opportunity to contest extradition in the courts of the State in which he is located. Where waiver is refused, the nearest naval legal service office or Marine Corps Staff Judge Advocate is responsible for effecting liaison with officials of both the requesting State and State in which the serviceman is located. The provisions of paragraph (b) (4) of this section regarding transfer of the serviceman apply while State authorities are actively proceeding to effect extradition.

(4) No delivery of a serviceman by Navy or Marine Corps officers pursuant to a fugitive warrant or waiver of extradition shall be effected without completion of the agreement required by § 720.5 and execution of such agreement by officials of both the requesting State and the State in which the serviceman is located or execution of such agreement by officials of the State in which the man is located where such officials accept on behalf of such State the full responsibility for returning the individual to the designated military command.

(d) *Personnel stationed outside of the United States.* When the serviceman sought by State authorities is not located within a State, Territory, or Commonwealth of the United States, see § 720.3.

§ 720.4 [Amended]

3. In § 720.4, seventh line, after "720.-14" and before "720.20," the following section number is added "720.15."

4. Section 720.5 is amended to provide as follows:

§ 720.5 Agreement required prior to delivery to State authorities.

In every case in which the delivery of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in § 720.17. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity (to the command to which he is attached) which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation (under escort in case of delivery in accordance with § 720.15) back to a naval or Marine Corps activity as set forth herein, cash necessary to cover his incidental expenses en route thereto, and the Department of the Navy is so informed. Any departure from the agreement set forth in § 720.17 must have prior approval from the Secretary of the Navy (Judge Advocate General).

5. Section 720.8 is amended to provide as follows:

§ 720.8 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending, commanding officers must obtain specific authority from the Secretary of the Navy (Judge Advocate General) to deliver personnel to Federal, State, Territory, Commonwealth, or local authorities.

(b) *When delivery may be refused.* Delivery may be refused in the following circumstances:

(1) Where the accused has been retained for prosecution as set forth in § 719.107(g)(3)(a) of this chapter.

(2) When the commanding officer considers that extraordinary circumstances exist which indicate that delivery should be denied.

(c) *Delivery under Detainers Act.* Where the accused is undergoing a sentence of a court-martial, see § 720.15.

(d) *Reports required.* When delivery is refused, see § 720.10.

6. Section 720.10 is amended to provide as follows:

§ 720.10 Report required when delivery refused.

In any case where delivery has been refused, the commanding officer shall report the circumstances to the Judge Advocate General by message (telephone if circumstances warrant). He shall thereafter confirm the initial report by letter setting forth a full statement of the facts. RCS JAG 5821-4. A copy of the report shall be forwarded to the Commandant of the Naval District or to the Area Coordinator, as appropriate.

§ 720.14 [Amended]

7. In paragraph (a) of § 720.14, 16th line, the word "but" is changed to "only".

8. Paragraph (b)(1) of § 720.14 is amended to provide as follows:

(b) * * *

(1) Immediately following the message or telephonic report to the Secretary of the Navy (Judge Advocate General) a copy of the petition for the writ of habeas corpus, and all other pleadings, orders, and process in the case, will be forwarded to the Secretary of the Navy (Judge Advocate General) by letter. The letter should also include a full statement as to the circumstances under which the petitioner has been detained. RCS JAG 5821-6.

9. A new § 720.15 is added, which provides as follows:

§ 720.15 Request for delivery of personnel serving sentence of court-martial.

(a) *General.* The Interstate Agreement on Detainers Act (18 U.S.C.A. App.) makes the Federal Government a party to the Interstate agreement which is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner's future. The Act provides a way for the prisoner to be tried on charges pending in another State, either at the prisoner's request or at the request of the State where charges are pending.

(b) *Liaison with State and federal officials.* Upon request by either the prisoner or State or federal authorities, the Director of the nearest naval legal service office or Marine Corps judge advocate, as appropriate shall effect liaison with the appropriate State or federal officials and shall monitor and take action on all such requests. The agreement described in § 720.5 will be required as a condition precedent to delivery to the State authorities. While requests between federal authorities are not covered by the Act, the same rules shall generally apply except that no such agreement is required (see § 720.6).

(c) *Timeliness of delivery.* After request has been made, a prisoner shall be released to State or federal officials as soon as practicable (after the court-martial sentence is announced). If the sentence is not final, the accused must be given the opportunity to request or decline to request, in writing, to remain in military custody to aid in his court-martial appeal. Such request normally will be granted.

(d) *Article V of the Detainers Act.* Nothing in the Detainers Act generally or in Article V(e) specifically requires the automatic return of a military prisoner, delivered to the temporary custody of State or federal officials and thereafter convicted by a civilian tribunal, to military authorities either prior to or after the execution of the civilian sentence where military authorities do not request such a return. Military authorities may request the return of a military prisoner delivered to civilian temporary custody under the Act, and such prisoner should be returned upon completion of civilian prosecution. If such prosecution results in conviction and sentencing by the civilian tribunal, such civilian sentence shall not be served by a military prisoner (whose return prior to sentence has been requested by military authorities) until after completion of the court-martial sentence. If return prior to civilian sentence is not requested and is not otherwise effected, conviction in a civil tribunal interrupts the execution of the sentence of the court-martial. A military prisoner whose return after serving his civilian sentence is requested by military authorities shall be returned and be required to serve the remaining portion of the court-martial sentence. See 10 U.S.C. 814(b). However, nothing requires military authorities to request such a return even when a portion of the court-martial sentence may remain uncompleted. Where return is not to be requested, consideration should be given to the separation of the military prisoner under applicable directives or regulations.

10. A new § 720.16 is added, which provides as follows:

§ 720.16 Waiver of extradition form.

WAIVER OF EXTRADICTION (See § 720.2)

I, _____, United States Navy (United States Marine Corps), having been advised of my rights to formal extradition as provided for in section 1302 JAG Manual by _____ of
(Name of military or civilian attorney)

_____, waive such rights
(Address of attorney)

and agree to accompany _____, a representative of the State of _____, into the territorial limits of said State. I have been advised that the crime which I am charged to have committed in the State of _____ is as follows:

_____
(Signature)

Witnessed:

_____
(Signature of Witness)

11. A new § 720.17 is added, which provides as follows:

§ 720.17 Delivery agreement form.

DELIVERY AGREEMENT (See § 720.5)

In consideration of the delivery of _____
(Name of _____ United States Navy (United person delivered)

States Marine Corps), to _____ at _____, for trial upon the charge of _____, I hereby agree pursuant to the authority vested in me as _____ _____ that _____
(Name of person delivered)

United States Navy (United States Marine Corps) will be transported to the State of _____ without expense to him or the United States and that the Commanding Officer of the _____ will be notified

immediately of the outcome of the trial and that the said _____,
(Name of person delivered)

will be returned to the _____, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case: *Provided*, That the Department of the Navy shall then desire his return.

§ 720.20 [Amended]

12. In paragraph (c)(1) of § 720.20, third and fourth lines, "§§ 750.2d and 750.55(d)" is changed to "§§ 750.21 (a) and (b) and 750.32"

13. In paragraph (c)(2) of § 720.20, second line, "§ 750.1(a)" is changed to "750.31(a)".

14. Paragraph (d)(1) of § 720.20 is amended to provide as follows:

(d) * * *

(1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846). Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General. Service of process when the United States Government or one of its agencies or instrumentalities is the named defendant may involve a situation where the doctrine of sovereign immunity will allow the service of process to be returned to the court through diplomatic channels. Service of process directed to an official of the United States, on the other hand, must always be processed in accordance with the applicable international agreement or treaty, whether or not the suit involves acts performed in the course of official duties. When the report required by § 720.25 is made, the Judge Advocate General will make arrangements through the Department of Justice for defense of a suit against the United States or an official acting within the scope of his official duties, or other appropriate arrangements, and will issue appropriate instructions.

15. In paragraph (f) of § 720.20, seventh line, after "(Judge Advocate General)" the following is added "RCS JAG 5821-8."

§ 720.22 [Amended]

16. In paragraph (a) of § 720.22, seventh and eighth lines, the words "the Bureau of Naval Personnel or the Commandant of the Marine Corps" are changed to "the Chief of Naval Personnel, the Commandant of the Marine Corps, or the Judge Advocate General with respect to civilian employees."

17. Paragraph (a) of § 720.24 is amended to provide as follows:

§ 720.24 Interviewing personnel preliminary to civil litigation in matters pertaining to official duties.

(a) *Request by parties in interest.* Except as hereinafter limited requests, preliminary to civil litigation, for permission to conduct an ex parte interview of persons in the Department of the Navy (enlisted, commissioned, or civilian) in matters growing out of their official duties, and requests regarding the obtaining of their statements shall be forwarded to the officer in charge of the cognizant naval legal service office of Marine Corps Staff Judge Advocate, who when practicable, will make appropriate arrangements in order that all of the desired personnel may be interviewed at the same time. The interview will be by all of the counsel for the various parties in interest or by such counsel as desire to be present. Interviews of such personnel shall be conducted in the presence of an officer designated by the officer in charge of the naval legal service office. If any of the parties in interest desire statements from the interviewed personnel, such statements shall be prepared under the direction of the designated officer. A signed copy of the statement shall be furnished (at no cost to the Government) to the person making the statement, and to the officer in charge of the naval legal service office and to the Judge Advocate General. If the interview involves any line of inquiry which would disclose privileged matters or compromise classified material or otherwise be detrimental to the security interests of the United States, the assigned officer shall immediately preclude that line of inquiry.

* * * * *

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18892 Filed 6-29-76;8:45 am]

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031 and 5148, 37 U.S.C. 601-604, 1001, 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 726. The amendments relate entirely to internal naval management and personnel practices and largely reflect nonsubstantive organizational changes adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is therefore not required under the public rulemaking provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 726 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601-604, 1001; 32 CFR §§ 700.206 and 700.1202.

2. SECTION 726.3 is amended to provide as follows:

§ 726.3 Authority to designate trustees to receive Federal moneys.

(a) The Judge Advocate General; the Deputy Judge Advocate General; and any Assistant Judge Advocate General of the Navy; are delegated authority by the Secretary of the Navy to designate the person or persons who may receive active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, otherwise payable to a member of the naval service who, in the opinion of competent medical authority, is mentally incapable of managing his affairs, and for whom no committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction.

(b) The Judge Advocate General has granted to the Assistant Judge Advocate General (Civil Law) [hereafter referred to in this part as the AJAG(CL)] authority to fully administer the Fiduciary Affairs Branch of the Administrative Law Division of the Office. This Branch provides for the designation, supervision, and discharge of trustees for members of the naval service found to be incapable of managing their affairs. All questions and other matters pertaining to trustees for incompetent members should be forwarded to the AJAG(CL); the Director, Administrative Law Division; or the Head, Fiduciary Affairs Branch.

§ 726.4 [Amended]

3. In paragraph (a) of § 726.4, the word "OinC" is changed to "AJAG(CL)" in the second line and fourth line.

4. Paragraph (c)(3) of § 726.4 is amended to provide as follows:

(c) * * *

(3) The convening authority shall forward one copy of the record and competency certification as follows:

(i) *Naval Service.* To the AJAG(CL) Office of the Judge Advocate General, Washington, DC 20370; Attn: Code 137;

(ii) *Army.* To the Commanding General, Finance Center, U.S. Army, Indianapolis, IN 46249 (Attn: Settlements Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(iii) *Air Force.* To the Director of Military Personnel, Headquarters USAF, Washington, DC 20030 (Attn: AFPMC, Randolph AFB, Universal City, TX 71848);

(iv) *Coast Guard.* To the Commandant, U.S. Coast Guard (Code PSS162), 400 7th St., S.W., Washington, DC 20590;

(v) *Coast and Geodetic Survey (ESSA).* To the Director, Coast and Geo-

detic Survey, Washington Science Center, 11800 Old Georgetown Road, Bethesda, MD 20852;

(vi) *Public Health Service.* To the Chief, Office of Personnel, Public Health Service, Department of Health, Education, and Welfare, Washington, DC 20201.

This report is to be used as the medical basis for a trustee designation, or for the termination of a trusteeship previously established on a finding of incompetency.

§§ 726.5, 726.7, 726.8, 726.9 and 726.10 [Amended]

5. The word "OinC" is amended to "AJAG(CL)" at the following places:

Section 726.5(a), fifth line, sixth line, 12th line, 19th line, 25th line, and 29th line;

Section 726.7(a)(1), sixth line;

Section 726.7(a)(2), ninth line;

Section 726.7(b), sixth line and 17th line;

Section 726.7(c), seventh line and 11th line;

Section 726.7(d), fourth line;

Section 726.7(e), second line, fifth line, and ninth line;

Section 726.7(e)(2), fourth line;

Section 726.7(f), fourth line, tenth line, and 20th line;

Section 726.7(g), 11th line, 24th line, 26th line, 36th line, and 45th line;

Section 726.8(a), fourth line, 12th line, 17th line, and 24th line;

Section 726.8(b)(4), (5), (6), and (7), second line of each and sixth line of (b)(6) and (b)(7);

Section 726.8(c), second line, fifth line, and seventh line;

Section 726.8(d), first line, eighth line, 12th line, and 18th line;

Section 726.9, third line and sixth line;

Section 726.10, first line.

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18893 Filed 6-29-76;8:45 am]

PART 727—LEGAL ASSISTANCE

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031 and 5148, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 727. The amendments relate entirely to internal naval management and personnel practices and largely reflect nonsubstantive changes adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is not required under the rule-making provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 727 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

2. Section 727.3 is amended to provide as follows:

§ 727.3 Legal assistance officers.

All Navy and Marine Corps judge advocates on active duty or inactive duty for training, and all civilian lawyers under the cognizance of the Judge Advocate General who are members of the bar of a Federal court or of the highest court of any State, or, in foreign countries, who are authorized to practice law in the courts of the country concerned, are legal assistance officers. While performing legal assistance duties, legal assistance officers shall be guided by the Canons, Ethical Considerations, and Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association and the Canons of Professional Ethics and supplemental Federal Ethical Considerations of the Federal Bar Association. Persons who are authorized to practice law in the courts of a foreign country shall be guided by similar standards which have been promulgated for the guidance of lawyers in the country concerned.

§ 727.4 [Amended]

3. In paragraph (a) of § 727.4, third line, the words, "each Navy center" are changed to "each naval legal service office."

4. Section 727.6 is amended to provide the following:

§ 727.6 Functions of legal assistance officers.

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist persons eligible for assistance in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in § 727.9.

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings.

(3) Shall, in appropriate cases and under guidelines prescribed in the Manual of the Judge Advocate General contemplating agreements or liaison with appropriate civilian bar officials, serve as advocate and counsel for, and provide full legal representation including representation in court to, persons eligible for assistance in connection with their personal legal problems.

(4) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(5) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV Instruction 5350.5 series.

(b) *Nature of assistance.* Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

(c) *Duty to client.* A legal assistance officer should exercise his independent professional judgment on behalf of his client within the standards promulgated i nthe Code of Professional Responsibility and the specific limitations imposed in this part.

5. Section 727.7 is amended to provide as follows:

§ 727.7 Limitations on service provided.

(a) *Assistance in official military matters.* Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a serviceman accused or suspected of an offense or of conduct leading to administrative proceedings will request advice from the legal assistance officer. In such a case, he should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for a respondent, or counsel for a party.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

(c) *Nonlegal advice.* The legal assistance officer, while giving legal advice, may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or

in conflict with the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. 201, and 18 U.S.C. 205.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

§ 727.8 [Amended]

6. In § 727.8, 22nd line, the comma after "completely" is deleted.

§ 727.15 [Amended]

7. In § 727.15, section heading, the word "chapter" is changed to "part."

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18894 Filed 6-29-76;8:45 am]

PART 734—PAYMENT OF CERTAIN ALLOWANCES AND DIFFERENTIALS TO CIVILIAN EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES OF THE DEPARTMENT OF THE NAVY

Miscellaneous Amendments

Pursuant to the authority conferred in 3 U.S.C. 301, 5 U.S.C. 301, 10 U.S.C. 5031, and Exec. Order No. 11137, the Secretary of the Navy amends 32 CFR Part 734 to reflect changes which were adopted on March 1, 1972, but were previously omitted from codification. These amendments are nonsubstantive in nature, and were adopted prior to April 1, 1975, the effective date of the administratively established public rulemaking procedures prescribed in 32 CFR 296.5. It has therefore been determined that invitation of public comment on these amendments is not required and would be impracticable. Part 734 of 32 CFR is therefore amended as follows:

§ 734.1 [Amended]

1. In § 734.1, third and fourth lines, the words "of January 7, 1964 (29 F.R. 223)" are changed to "3 CFR 174 (1964)."

§ 734.2 [Amended]

2. In § 734.2, 11th and 12th lines, the words "section 1 of the act of June 19, 1952, ch. 444 (5 U.S.C. 150K)" are changed to "5 U.S.C. 2105c."

§ 734.3 [Amended]

3. In paragraph (a)(2) of § 734.3, seventh, eighth and ninth lines, the words "Executive Order 10903 of January 9, 1961 (26 FR 217)" are changed to "Exec. Order No. 10903, 3 CFR 433 (1961)."

4. In paragraph (a)(2) of § 734.3, tenth line, a period is added after the word "locality" and the words "or those prescribed by Department of Defense memorandum (Memorandum for the Assistant Secretary of Defense (Manpower)) of January 21, 1963, as amended." are deleted.

5. In paragraph (b)(1) of § 734.3, fifth and sixth lines, the words "591.201 of Title 5 of the Code of Federal Regulations" are changed to "591 of the Federal Personnel Manual."

6. In paragraph (b)(2) of § 734.3, eighth and ninth lines, the words "of September 16, 1948 (13 F.R. 5453)" are changed to "3 CFR 792 (1948)."

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18890 Filed 6-29-76;8:45 am]

PART 750—GENERAL CLAIMS REGULATIONS

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S. 2733, 5031, and 5148, 31 U.S.C. 240-243, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 750. The amendments relate entirely to internal naval management and largely reflect nonsubstantive changes adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is not required under the rule-making provisions in Part 296 and 701 of 32 CFR.

32 CFR Part 750 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2733, 5031, and 5148; 31 U.S.C. 240-243; 32 CFR 700.206 and 700.1202.

§ 750.3 [Amended]

2. In paragraph (d) of § 750.3, 13th line, after the word "General" the following sentence is added: "Report Control Symbol JAG 5890-12 is assigned to this report."

§ 750.4 [Amended]

3. In paragraph (c) of § 750.4, second line, after the number "No. 91" the following is added: "RCS JAG 5890-13."

* * * * *

4. In § 750.10, a new paragraph (c) is added, which provides as follows:

§ 750.10 Claims; In general.

* * * * *

(c) *Assistance to claimants.* Claimants or potential claimants who make inquiry concerning their rights or procedures to be followed in the filing of claims shall be referred to a Navy claims officer. It shall be an official duty of the claims officer to: (1) Provide such persons with the proper claim forms, (2) advise where the claims forms should be submitted, (3) advise what, if any, substantiating evidence will be required to be filed with the claims forms, and (4) advise generally concerning the requirements of § 750.13. A federal official must be careful not to violate 18 U.S.C. 205, which makes it a crime for any officer or employee of the United States to act as an agent or attorney in the prosecution of any claim against the United States. See § 727.7(d) concerning requests for legal assistance in connection with claims against the United States.

§ 750.24 [Amended]

5. In paragraph (b)(1) of § 750.24, fourth line, the words "the Republic of Vietnam" are deleted.

6. In paragraph (b)(2) of § 750.24, second and third lines, the words "Italy, and Portugal" are changed to "Italy, Portugal, and the Republic of Vietnam".

7. In paragraph (c)(7) of § 750.36, fifth line, after the words "contract rights;" the following is added:

§ 750.36 Scope of liability.

* * * * *

(c) * * *

(7) * * * : *Provided,* That with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of Federal Tort Claims Act shall apply to any claim arising on or after March 16, 1974, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this provision, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of federal law.

* * * * *

§ 750.52 [Amended]

8. In § 750.52, the amount "$15,000" is changed to "$25,000" at the following places: Paragraph (a), seventh line; paragraph (b), second line, fourth line and seventh line.

9. Paragraph (c) of § 750.52 is amended to provide as follows:

(c) *Delegable authorization to pay claims not in excess of $5,000.* In any case where the amount to be paid is not more than $5,000, the Secretary of the Navy may delegate the authority of 10 U.S.C. 2733(a) and paragraph (a) of this section, subject to appeal to the Secretary or his designee for that purpose (10 U.S.C. 2733(g)). See § 750.80 for the Navy and Marine Corps officials with delegated authority to pay claims, and see § 750.53(h) for the appellate designees under this section.

* * * * *

10. Paragraph (h) of § 750.53 is amended to provide as follows:

§ 750.53 The administrative claim.

* * * * *

(h) *Appeal of the claim.* (1) A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. Such appeal shall be in writing and shall state the grounds relied upon.

(2) An appeal in any case where the amount in contention exceeds $5,000 may be decided either by the Secretary of the Navy or the Judge Advocate General, except that, where the claim is disapproved

originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary.

(3) An appeal in any case where the amount in contention is $5,000 or less may be decided either by the Secretary of the Navy, the Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), or the Deputy Assistant Judge Advocate General (Claims); provided, any such appeal must be decided by an official senior to the official who originally disapproved the claim.

(4) See § 750.20(c) for procedure for disposing of an appeal.

§ 750.64 [Amended]

11. In § 750.64 the words "See appendix section A–20–(e)." are changed to "See § 750.80".

§ 750.80 [Amended]

12. In § 750.80 the words "See Appendix A–20–(e)." are changed to

"(a) *Amount.* See Appendix A–20–(e) of the Manual of the Judge Advocate General.

(b) *Territory.* See Appendix A–20–(f) of the Manual of the Judge Advocate General."

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76–18895 Filed 6–29–76;8:45 am]

PART 751—PERSONNEL CLAIMS REGULATIONS

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031 and 5148, 31 U.S.C. 240–243, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 751. The amendments relate to internal naval management and personnel practices and largely reflect nonsubstantive changes adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is therefore not required under the public rulemaking provisions in Parts 296 and 701 of 32 CFR. 32 CFR Part 751 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 240–243; 32 CFR 700.206 and 700.1202.

§ 751.2 [Amended]

2. In § 751.2, eighth and ninth lines, the words "The maximum amount allowable on a claim is $10,000" are amended to "The maximum amount allowable per incident on a claim is $15,000."

3. Paragraph (i) of § 751.3 is amended to provide as follows:

§ 751.3 Claims payable.

* * * * *

(i) *Motor vehicles.* Motor vehicle claims, except for collision damage claims, are payable where the vehicle was damaged or lost when: located on base, located off base at quarters overseas, being employed at the time of the loss on official business, or under any of the circumstances contemplated by § 751.3 (a), (b), (d), (e), or (f). See also § 751.4 (i).

* * * * *

§ 751.4 [Amended]

4. In paragraph (i) of § 751.4, sixth line, the word "of" is amended to "or."

§ 751.13 [Amended]

5. The dollar amount "$10,000" is amended to "$15,000" at the following places:

Section 751.13(a)(1), second line and fourth line;

Section 751.13(a)(2), first line, third line, and sixth line.

6. Paragraph (a) of § 751.24 is amended to provide as follows:

§ 751.24 Adjudicating authority.

(a) *Claims by Navy personnel.* The following persons are authorized to adjudicate and authorize payment of a personnel claim up to $15,000.00:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) Any Assistant Judge Advocate General.

(4) The Deputy Assistant Judge Advocate General (Claims).

(5) Head, Personnel Claims Branch, Claims Division.

(6) Commandants of Naval Districts and their staff judge advocates.

(7) Officers in charge of naval legal service offices.

(8) Judge advocates attached to naval legal service offices when designated by the officer in charge ($5,000.00).

(9) Heads of naval legal service branch offices ($5,000.00).

(10) Naval Supply Center, Oakland, California, Staff Judge Advocate ($5,000.00).

(11) Other Navy judge advocates when designated by the Judge Advocate General.

In addition to the above, all Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of claims up to $1,000 filed under this part. Any naval officer, when personally designated by the Judge Advocate General, is authorized to adjudicate and authorize payment of claims up to $500 filed under this part. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General, Washington, DC 20370. § 751.30 lists those commands currently authorized to adjudicate personnel claims.

* * * * *

7. Section 751.30 is amended to provide as follows:

§ 751.30 Personnel claims adjudicating authorities.

The following is a list of commands with adjudicating authorities attached who have received funding authority and are capable of processing personnel claims filed pursuant to 31 U.S.C. 240–243 (see § 751.24):

$15,000 AUTHORITIES

Officers in Charge of Naval Service Offices located at:

NAVBASE, Philadelphia, PA
NAVBASE, Charleston, SC
NAVSTA, San Diego, CA
Seattle, WA
NAVSTA, Pearl Harbor, HI
Washington Navy Yard, Washington, DC
NAS, Memphis, Millington, TN
COMNAVFORJAPAN
NAS, Jacksonville, FL
NAVBASE, Norfolk, VA
NAVBASE, Great Lakes, IL
NAVSTA, Treasure Island, San Francisco, CA
NETC, Newport, RI
NAS, Corpus Christi, TX
COMNAVFORMARIANAS
NAS Pensacola, FL
NAVSUPPACT, NAPLES
NAVBASE, SUBIC

Commandants of Naval Districts Eight and Fifteen, and staff judge advocates attached to:

COMEIGHT
COMFIFTEEN
NAVAIRTESTCEN, Patuxent River, MD
COMNAVACTS, UNITED KINGDOM
COMNAVBASE, GTMO

$5,000 AUTHORITIES

Heads of Naval legal service branch offices located at:

NAVSUBASE, New London, CT
FLESUPPO, Athens, Greece
NAS, Whidbey Island, WA
NAS, Lemoore, CA
NAVSTA, Rota, Spain
FLEACT, Sasebo, Japan
NTC, Orlando, FL

Staff judge advocates attached to:

NSC, Oakland, CA (ADDU)

$1,000 AUTHORITIES

Staff judge advocates attached to:

NAVSTA, Argentia, Newfoundland
NAVSECGRUACT, Misawa, Japan
NAF, Atsugi, Japan
NAS, Kingsville, TX
NSC, Charleston, SC
NSC, Pearl Harbor, HI
NAVSTA, Mayport, FL
NAS, Pensacola, FL
NAS, Lakehurst, NJ
NAVSTA, Keflavik, Iceland
COMSUBLANT, Holy Loch, Scotland
NAVPGSCOL, Monterey, CA
NAVCOMMSTA, Harold E. Holt, Australia
NAS, Brunswick, ME
NAF, Sigonella, Sicily
NAVSUPPACT, Mare Island, CA
NAS, Bermuda
NAS, Meridian, MS
NAS, Chase Field, Beesville, TX
NAS, Glynco, GA
NAVSTA, Philadelphia, PA
NAVSTA, Adak, AK
CBC, Gulport, MS
FLEACT, Okinawa
HEDSUPPACT, Taipei, Taiwan
NAVTRACOM, Morocco
COMIDEASTFOR, Bahrain

$500.00 AUTHORITIES

Other naval officers (Supply Corps officers and Personal Property Transportation Officer), when specifically designated by the Judge Advocate General, attached to:

NAVSUBASE, New London, CT
NAVPGSCOL, Monterey, CA
NAVFAC, Brawdy, Wales
RESUPSHIP, Pascagoula, MS
NAVSUPDEP, Guam
NAVSCSCOL, Athens, GA
NAVSTA, Midway Island
NSD, Subic Bay, RP
NSC, Oakland, CA

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law)

[FR Doc.76-18896 Filed 6-29-76;8:45 am]

PART 752—ADMIRALTY CLAIMS

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031 and 5148, 10 U.S.C. 7621-23, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 752. The amendments relate entirely to a change in an organizational address and reflect a nonsubstantive change adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is not required under the rule-making provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 752 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031, 5148, and 7621-23; 32 CFR 700.206 and 700.1202.

§ 752.5 [Amended]

2. In paragraph (b) of § 752.5, seventh and eighth lines, the words "17 Battery Place, New York, New York 10004" are changed to "One World Trade Center, New York, NY 10048."

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law)

[FR Doc.76-18897 Filed 6-29-76;8:45 am]

PART 753—FOREIGN CLAIMS REGULATIONS

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 2734, 5031, and 5148, and 32 CFR § 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 753. The amendments reflect nonsubstantive changes needed to update Part 753. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is therefore not required under the public rule-making provisions in Parts 296 and 701 of 32 CFR. Part 753 of 32 CFR is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2734, 5031, and 5148; and 32 CFR 700.206 and 700.1202.

§§ 753.1, 753.2, 753.3 [Amended]

2. The word "chapter" is changed to "part" in the following sections: § 753.1, 15th line; § 753.2, sixth line; § 753.3, first line;

3. In paragraph (a) of § 753.18, 28th line, the words "Advisor to Argentina; and naval attaches" are changed to "Advisor to Argentina; naval attaches, and officers in charge of naval legal service offices", and paragraph (b) of § 753.18 is revised to provide as follows:

§ 753.18 Appointment and authority of Foreign Claims Commission.

* * * * *

(b) Claims commissions may consider claims in any amount, and are hereby granted authority to approve in full or in part, or to disapprove, claims for not more than $25,000. Allowance of any claim, however, in excess of the following amounts is subject to the approval of the Judge Advocate General, Deputy Judge Advocate General, or the Assistant Judge Advocate General (Civil Law), or, with respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy, or, with respect to claims which arise in Australia, the Officer in Charge, U.S. Sending State Office for Australia.

(1) One-officer commission—$5,000.

(2) One-officer commission composed of a member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps—$10,000.

(3) Three-officer commission—$10,000.

(4) Three-officer commission which includes at least one member of the Judge Advocate General's Corps or a judge advocate of the Marine Corps—$20,000.

§ 753.25 [Amended]

4. The dollar amount "$15,000" is changed to "$25,000" in the following provisions: § 753.25, in the heading; § 753.25(a), in the second line; § 753.25 (b), in the seventh line.

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18898 Filed 6-29-76;8:45 am]

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 939, 5031, and 5148, Exec. Order No. 11476, and 32 CFR 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 755. The amendments are nonsubstantive corrections required to update Part 755. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is therefore not required under the public rule-making provisions in Parts 296 and 701 of 32 CFR.

Part 755 of 32 CFR is therefore amended to read as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5031, and 5148; Exec. Order No. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32 CFR §§ 700.206 and 700.1202.

§ 755.5 [Amended]

2. In paragraph (b)(1) of § 755.5, fourth line, "§ 750.50" is changed to "§ 750.11."

3. In paragraph (b)(2) of § 755.5, 14th line, "§ 750.52" is changed to "§ 750.13."

§ 755.6 [Amended]

4. In paragraph (b) of § 755.6, seventh line, "§§ 750.58 and 750.59" is changed to "§§ 750.6 and 750.7."

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18899 Filed 6-29-76;8:45 am]

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Miscellaneous Amendments and Correction

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031 and 5148, 42 U.S.C. 2651-53, 31 U.S.C. 952, and 32 CFR §§ 700.206 and 700.1202, the Judge Advocate General of the Navy amends 32 CFR Part 757. The amendments relate entirely to internal naval management and largely reflect nonsubstantive changes adopted in the Manual of the Judge Advocate General, with the approval of the Secretary of the Navy. It has been determined that invitation of public comment on these amendments prior to adoption would be impracticable and is not required under the rule-making provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 757 is therefore amended as follows:

1. The authority citations are amended to read as follows:

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 31 U.S.C. 952; 42 U.S.C. 2651-53; 32 CFR §§ 700.206 and 700.1202.

2. § 757.1 is revised to provide as follows:

§ 757.1 Definitions.

For the purposes of this subpart:

(a) *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

(b) *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Claims);

(2) The Commandants of all naval districts not served by naval legal service offices, and their district judge advocates;

(3) The Officers in Charge of all naval legal service offices, except naval legal service offices in countries where another service has single service responsibility.

(4) The Officers in Charge of U.S. Sending State Offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

(c) *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.*, where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

(d) *The Act.* "The Act" means the Medical Care Recovery Act (42 U.S.C. §§ 2651–53).

(e) *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

(f) *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claims.

3. § 757.2 is revised to provide as follows:

§ 757.2 Authority of the Judge Advocate General and JAG designees.

(a) *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (i.e., a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer-in-charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

(b) *Authority of JAG and certain JAG designees.* (1) The Judge Advocate General or any cognizant JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) Any cognizant JAG designee, after considering the factors set forth in § 757.5, may compromise or waive any claim not in excess of $20,000 and issued a release thereof.

(c) *Claims exceeding $20,000.* Claims in excess of $20,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

(d) *Potential Value of Claims.* When settlement, compromise or waiver is imminent and the final NAVJAG 5890/12 has not been filed, JAG designees are authorized to estimate the potential value of the claim and to take appropriate action if the potential value comes within their settlement authority.

(e) *Recomputation of Claims.* JAG designees are authorized to recompute the amount of claims reported on form NAVJAG 5890/12 in accordance with the standards of "Tolliver v. Shumate," 151 W. Va. 105, 150 S.E. 2d 579 (1966), and "United States v. Jones," 264 F. Supp. 11 (1967). The information contained on form NAVJAG 5890/13, the particular practices of the hospital involved and the known facts of the case will be considered. Hospitalization periods may be subtracted from the claim when such hospitalization was unnecessary, (such as where a patient was given leave, liberty, or was awaiting assignment to new duties) or may be charged at the reduced rate of an outpatient visit for each day of hospitalization where medical treatment was actually rendered, but hospitalization in a civilian hospital would have been unnecessary or inappropriate. If, upon recomputation, the claim is within the authority of the JAG designee making such recomputation, the claim may be acted upon by that JAG designee.

(f) *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice, (2) a suit has been instituted against the United States by the third party, or (3) a suit has been instituted against the individual who received or is receiving the medical care described above, and for whose negligence the United States may be held liable.

(g) *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. Attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

§ 757.3 [Amended]

4. In paragraph (c)(1) of § 757.3, fifth line, the words "will exceed 2 days" are changed to "will last three or more days."

§ 757.5 [Amended]

5. In paragraph (d)(1) of § 757.5, 17th line, § 757.2(c)" is changed to "§ 757.2 (b)."

§ 757.14 [Amended]

6. It has been noted that there was an inadvertent garbling of words in the 12th and 13th lines of 32 CFR 757.14 in FR Doc. 74–14227, appearing at 39 FR 22262, June 21, 1974. 32 CFR 757.14 is therefore corrected as follows:

Between the 11th and 14th lines of § 757.14, the following two lines are deleted:

"ignees, the authority granted to the Se-

ted by the "Joint Regulations of the".

§ 757.15 [Amended]

7. In paragraph (a)(1) of § 757.15, third, fourth, fifth, and sixth lines, the words "the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Division" are changed to "and the Deputy Assistant Judge Advocate General (Claims)."

Dated: June 23, 1976.

LARRY G. PARKS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-18900 Filed 6-29-76;8:45 am]

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

PART 850—INFORMATION SECURITY PROGRAM

Security

A new part 850 is added as follows:

Subpart A—Background

Sec.
850.1 Purpose.
850.2 Other implementing DOD directives.
850.3 Instructions for use.

Subpart B—General Provisions

850.4 References.
850.5 Combat operations.
850.6 Atomic energy act.
850.7 Access.
850.8 Critical nuclear weapon design information.

Sec.
850.9 Classification, resolution of doubts.
850.10 Classification, improper classification.
850.11 Original classification authority.
850.12 Record and report requirements.
850.13 Downgrading and declassification authority, general.
850.14 Downgrading and declassification authority, HQ USAF.

Subpart C—Classification

850.15 Classification planning, format for classification guidance.
850.16 Classification planning, other security planning.
850.17 Recipient of classified information or material.
850.18 Reasons for classification.
850.19 Net national advantage.
850.20 Lead time advantage.
850.21 Classifying research data.
850.22 Effect of open publication, declassification for release.
850.23 Effect of open publication, release policy.
850.24 Re-evaluation of classification because of compromise.
850.25 Re-evaluation of classification because of compromise, notification.
850.26 Classification of restricted data and formerly restricted data.
850.27 General responsibility for classification guides)
850.28 General interests of other commands.
850.29 Research, development, test and evaluation programs.
850.30 Distribution of guides to office, Secretary of Defense.
850.31 Procedures.
850.32 Final Decision.
850.33 Tentative classification.
850.34 Classification of information previously determined to be unclassified.

Subpart D—Downgrading and Declassification

850.35 Dates or events carried forward.
850.36 General provisions.
850.37 Restricted data and formerly restricted data.
850.38 Submission of requests for review.
850.39 Action on requests for review.
850.40 Action on requests for review, appeals.
850.41 Notification of changes in classification or of declassification.

Subpart E—Marking

850.42 Overall and page marking.
850.43 Paragraph marking.
850.44 Subjects, titles, abstracts, and index terms.
850.45 Transmittal documents.
850.46 Electrically transmitted messages.
850.47 Photographs, films, and recordings (transparencies and slides).
850.48 Photographs, films, and recordings, magnetic tapes.
850.49 Photographs, films, and recordings (magnetic drums, discs, and disc packs and magnetic cards).
850.50 Pages of ADP listings.
850.51 Regarding and declassification markings.
850.52 Downgrading and declassification for ADP products.
850.53 Downgrading and declassification, use of indefinite dates.
850.54 Remarking material already marked group 1, 2 or 3, or not group marked.
850.55 Restricted data.
850.56 Sample letter, preparation of classified correspondence.
850.57 Sample letter, letter of transmittal for classified documents.
850.58 Sample endorsement, endorsement to classified letters.
850.59 Sample letter, marking restricted data (RD) and formerly restricted data (FRD) documents.

Subpart F—Safekeeping and Storage

850.60 General policy.
850.61 Storage of classified material, top secret.
850.62 Storage of classified material, secret and confidential.
850.63 Storage of classified material, non-GSA approved containers.
850.64 Storage of classified material, restrictions on use of storage containers.
850.65 Storage of classified material, transient couriers.
850.66 Procurement and phase-in of new storage equipment preliminary survey.
850.67 Procurement and phase-in of new storage equipment, purchase.
850.68 Designations and combinations, numbering and designating storage facilities.
850.69 Designations and combinations, combinations to containers, changing, requirement for semi-annual combination change.
850.70 Designations and combinations, combinations to containers (Use of AF Form 502).
850.71 Designations and combinations, combinations to containers, repair (of storage containers).
850.72 Designations and combinations, combinations to containers turn-in.
850.73 Responsibilities of custodians.
850.74 Care during working areas.
850.75 Care during working hours, plastic covers.
850.76 Care after working areas.
850.77 Emergency destruction.
850.78 Emergency planning.
850.79 Safeguarding EOD publications.

Subpart G—Safeguarding Large Items of Classified Material

850.80 General.
850.81 Safeguarding classified equipment on Aircraft.

Subpart H—Compromise of Classified Information

850.82 Policy.
850.83 Crystographic information.
850.84 Responsibility.
850.85 Preliminary inquiry.
850.86 Preliminary inquiry, determining type of incident.
850.87 Preliminary inquiry, reporting requirements.
850.88 Preliminary inquiry, notifications.
850.89 Investigation, USAF detailed procedures for the investigation of compromise or suspected compromise.
850.90 Investigation, special investigation requirements.
850.91 Investigation, modification of investigation and reporting requirements where incidents occur in Hostile or Politically Denied Areas.
850.92 Responsibility of authority ordering investigation review.
850.93 Responsibility of authority ordering investigation approval.
850.94 Responsibility of originator, review by originator.
850.95 Responsibility of originator, mitigating actions.
850.96 Espionage and deliberate compromise.
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AUTHORITY: 10 U.S.C. 8012.

Subpart A—Background

§ 850.1 Purpose.

This part supplements the Department of Defense (DOD) Information Security Program Regulation (DOD ISPR 5200.-1R) governing the classification, downgrading, declassification, and safeguarding of classified information. It applies to all Air Force activities, including the Reserve components. This part amplifies those DOD policies for use within the Air Force and provides procedural details where appropriate. Neither the DOD ISPR nor this part should be used without reference to all corresponding guidance in the other. Both the DOD ISPR and this part are to be issued simultaneously. Together, they take precedence over all other Air Force publications affecting the Information Security Program, except for special access programs that have been exempted. Where required, further supplementation is authorized. Forward recommendations for revision, or requests for interpretation, through command channels to HQ USAF/SPIB, Wash DC 20314. Compliance with both DOD 5200.1–R and this part is mandatory for each member of the Air Force. Violators are subject to administrative or judicial action.

§ 850.2 Other Implementing DOD Directives.

(a) 5200.1, The DOD Information Security Program, June 1, 1972.

(b) 5200.12, Security Measures, Approval and Sponsorship for Scientific and Technical Meetings Involving the Disclosure of Classified Information March 7, 1967.

(c) 5200.14, Defensive Security Briefings, June 28, 1962.

(d) 5200.22, Reporting of Security and Criminal Violations, Sept. 12, 1966.

(e) 5210.2, Access to and Dissemination of Restricted Data, October 18, 1968.

(f) 5210.43, Security Termination Statement and Debriefing Procedures, October 22, 1963.

(g) 5210.44, Security Orientation, Education and Training, February 17, 1964.

(h) 5210.50, Investigation of and Disciplinary Action Connected With Unauthorized Disclosure of Classified Defense Information, April 29, 1966.

(i) 5400.4, Provision of Information to the Congress, December 24, 1966.

(j) 5535.2, Secrecy of Certain Inventions and Withholding of Patent; Delegation of Authority to the Secretaries of the Army, Navy, and Air Force, September 30, 1966.

§ 850.3 Instructions for use.

The format of this regulation is compatible with that of the DOD ISPR. The reader should first refer to the DOD ISPR for basic policy, and then to this part for Air Force supplementation. When the DOD ISPR contains all available guidance on a subject this part contains no text. When this part implements the DOD issuances named above, additional parts or subparts of Air Force guidance are inserted in the text. For maximum effectiveness, file the DOD ISPR with this part under procedures in AFR 5–31, Publications Libraries and Individual Publications Sets.

Subpart B—General Provisions

§ 850.4 References.

Corresponding USAF references are shown in § 850.225 of this part.

§ 850.5 Combat operations.

In combat or combat-related operations, messages that contain Secret or Confidential information may be transmitted in the clear over any wire circuit or radio channel when time cannot be spared for encryption and the information cannot be acted on by the enemy in time to influence the situation in question. In order to minimize insecure transmissions mark messages "SEND IN THE CLEAR" over the signature of the commander or his designee.

§ 850.6 Atomic Energy Act.

Requirements pertaining to Restricted Data and Formerly Restricted Data have been included in this regulation.

§ 850.7 Access.

The ability and opportunity to obtain knowledge of classified information.

§ 850.8 Critical nuclear weapon design information.

That Top Secret Restricted Data or Secret Restricted Data revealing the theory of operation or design of the components of a thermonuclear or implosion-type fission bomb, warhead, demolition munition or test device. Specifically excluded is information concerning arming, fuzing, and firing systems; limited life components; and total contained quantities of fissionable, fusionable, and high explosive materials by type. Among these excluded items are the components which Service personnel set, maintain, operate, test, or replace.

§ 850.9 Classification, resolution of doubts.

The resolution of doubts principle set forth in this paragraph of the DOD ISPR is a key element in the overall effort to avoid unnecessary classification. However, before applying the principle, be sure that all pertinent facts have been obtained and considered.

§ 850.10 Classification, improper classification.

Any person who learns of a classification that has been assigned to conceal administrative error or inefficiency, or to prevent personal or departmental embarrassment requests review of the classification under the DOD ISPR, para 2–103, and this part, and notifies HQ USAF/SPIB through appropriate command channels. A commander through whom such notification is sent should initiate corrective action if the matter is within his jurisdiction, and may add to the original notification any comments considered pertinent. In every instance, however, the commander forwards the original notification promptly to HQ USAF/SPIB. HQ USAF/SPIB acknowledges receipt directly to the originator. If acknowledgement has not been received within 45 days, the originator forwards a copy of the notification directly to HQ USAF/SPIB.

§ 850.11 Original classification authority.

An original classification is one made in the manner described in the DOD ISPR, para 1–303a. Classifications made in the manner described in para 1–303b of the DOD ISPR do not require original classification authority.

(a) Officials authorized to make original Top Secret classifications are listed in the DOD ISPR, Appendix A. Lists of Air Force officials authorized to make original Secret and Confidential classifications are disseminated annually by HQ USAF/SPIB.

(b) Any request for additional original classification authority must be fully justified.

(1) Address requests for original Top Secret or Secret classification authority to HQ USAF/SPIB.

(2) Address requests for original Confidential classification authority to an appropriate command official who is himself an authorized Top Secret or Secret classifier.

(c) Approved additions to the list of original Confidential classifiers are forwarded to and are subject to review by HQ USAF/SPIB.

§ 850.12 Record and report requirements.

Each Air Force Activity maintains a list of officials within that activity who have been designated to make original classifications. The overall Air Force listing is maintained by HQ USAF/SPIB. See § 850.210 for additional guidance on reporting requirements.

§ 850.13 Downgrading and declassification authority, general.

The authority to downgrade or declassify information is assigned to:

(a) The official who made the original classification;

(b) The official or agency that assumed or succeeded to the functions of the original classifier; and

(c) Higher authority in the same chain of command. In addition, each official having original classification authority pursuant to § 850.11 may authorize in writing such other officials as he deems necessary to downgrade and declassify, in his name, information over which he has classification authority.

§ 850.14 Downgrading and declassification authority, HQ USAF.

Responsibility and authority for downgrading and declassifying information originated in HQ USAF, or in one of its predecessor agencies, is assigned to the Chief of the HQ USAF major staff office having primary responsibility for the subject matter.

(a) Official clearance of information, in accordance with established directives, by the Office of the Secretary of the Air Force, Office of Information, Office for Security Review, also shall constitute authority for declassification of the specific information cleared.

(b) Preparation of declassification notices in accordance with § 850.22 (Added) are the responsibility of the office or agency requesting official clearance of the information. However, if a document contains information from an agency other than the Air Force, the consent of that agency must be obtained.

(c) The chief of each of the following Air Staff Offices designates an official who is authorized to downgrade and declassify information under the classification jurisdiction of the staff office concerned: PR, XO, RD, LG, IN, SP.

(d) The same official is authorized to downgrade and declassify information classified at echelons below HQ USAF, provided that other interested major Air Staff offices concur in the action, and full consideration has been given to the views of the originating headquarters.

(e) When a document is clearly and beyond all doubt overclassified, the foregoing provisos do not apply, However, a copy of any downgrading or declassification action taken without meeting these requirements will be sent to HQ USAF/SPI.

(f) For every downgrading or declassification action taken, the responsible official must issue notification in accordance with § 850.22. (The intent of this paragraph is to simplify and expedite downgrading and declassification actions by obviating referral to the Chief of Staff or to the Chief of the major HQ USAF office concerned. This paragraph in no way lessens the responsibility of other elements of the major staff office, or of major commands or separate operating agencies for downgrading and declassifying information for which they are primarily responsible.)

Subpart C—Classification

§ 850.15 Classification planning, format for classification guidance.

Classification guidance for a plan or operations order may be included in the Security Annex, or as a separate section prefatory to the main body of the plan or order. Classification guidance for a system, program, or project (other than a procurement action) may be prepared as a section of the basic directive or as a separate classification guide.

(a) For procurement actions involving classified information, prepare DD Form 254, Contract Security Classification Specification, as prescribed by AFR 205–4, Air Force Participation in the DOD Industrial Security Program, and the DOD Industrial Security Regulation (DOD 5220.22R).

(b) If the classification considerations in the procurement action are not complex, the DD Form 254, by itself, may suffice.

(c) For major projects, or for programs, in which classification considerations are complex, prepare a security classification guide using the format prescribed in AFR 205–37, Security Classification Guides, and attach to the DD Form 254. (For further instructions concerning classification guides, see DOD ISPR, section 4, and related paragraphs of the part below.)

§ 850.16 Classification planning, other security planning.

In addition to classification matters, advance planning must take into account other information security requirements. Security instructions for each plan, operations order, program, or project should cover the following points, as applicable: reproduction limitations; dissemination restrictions; use of code words; special access authorization requirements; briefing and debriefing requirements; special physical security measures; public affairs issues; special procedures for approving public releases; special security requirements related to transporting personnel or material; provisions for unclassified shipments to classified destinations; and special emergency destruction procedures.

§ 850.17 Recipient of classified information or material.

The time requirement set in DOD ISPR (30 days from receipt) is a maximum. Replies to classification review requests must be prompt to assure that operational needs of the requester are met. Make HQ USAF/SPIB an information addressee on each classification review request addressed to HQ USAF and on the HQ USAF reply. Commanders shall establish similar requirements to provide for a central point for monitoring classification requests to, and replies from, their organizations.

§ 850.18 Reasons for classification.

Classification based on association with other information is permissible only when the association reveals specific classified information.

§ 850.19 Net national advantage.

Note that the "net advantage" mentioned in this paragraph must be to the nation; not to any individual governmental agency, commercial firm, or industry as a whole. If, from the standpoint of USAF the information under consideration warrants classification, final decision to withhold classification (or to declassify) is made only by the Chief of Staff, HQ USAF, or higher authority.

§ 850.20 Lead time advantage.

A generalized relationship to national defense is not sufficient reason for classifying on the basis of lead time advantage. Identify specific military application and operational advantage before classifying. For guidance on the classification of weapons systems, supporting systems, associated sub-systems, and miscellaneous aircraft and aircraft engines see AFR 205–49.

§ 850.21 Classifying research data.

Any original classification of basic research data must be approved by the Deputy Chief of Staff, Research and Development, HQ USAF, or higher authority.

§ 850.22 Effect of open publication, declassification for release.

Classified information proposed for public release must be declassified before release. The official who declassified must promptly notify all Air Force activities that hold, or are directly concerned with, the information.

(a) Occasionally, senior Air Force or Department of Defense officials make public releases without prior notice to the Air Staff office of primary responsibility. On learning that such a release has been made, the Air Staff office of primary responsibility determines from the releasing official's office what specific information was declassified, and issues a declassification notice to all Air Force activities that hold, or are directly concerned with, the declassified information.

(b) If an Air Force activity other than the Air Staff learns of such a release, and does not receive a declassification notice within a reasonable period of time it reports the release to the Air Staff office of primary responsibility and requests appropriate declassification action.

§ 850.23 Effect of open publication, release policy.

Public release of unclassified official information is governed by Part 806, and by the 190 series of Air Force regulations.

§ 850.24 Reevaluation of classification because of compromise.

See the DOD ISPR, chapter VI, and this part for more complete information concerning action in event of compromise.

§ 850.25 Reevaluation of classification because of compromise, notification.

Upgrading action under these circumstances is seldom justified. If such action is taken, notify HQ USAF/SPIB.

§ 850.26 Classification of restricted data and formerly restricted data.

Information shall not be designated Restricted Data or Formerly Restricted Data unless the designation is specifically required by official guidance or is clearly consistent with the definitions in the DOD ISPR paras 1–310 and 1–315.

§ 850.27 General, responsibility for classification guides.

Each commander of a major command, and each chief of a major staff office, is responsible for development and issuance of classification guidance for each system, program, or project for which he has management responsibility.

(a) Unless classification considerations are so simple that they can readily be incorporated in a section of the authorizing directive (or in the case of procurement actions, in the basic DD Form 254), prepare a formal classification guide, following as closely as practicable the format prescribed in AFR 205–37.

(b) When management responsibility transfers from one command to another, classification responsibility transfers concurrently. The losing command reviews the classification guide and assures that it is current and accurate as of the time of transfer.

§ 850.28 General, interests of other commands.

The commander or other official responsible for preparing a classification guide actively solicits views of other commands or agencies having collateral interest in the system, program, or project. The views of any command that is an operational user of the system or item covered by the guide will be obtained. The command preparing the guide will resolve any differences in views, using the following guidelines:

(a) Operational considerations must be given special attention.

(b) Full interchange of the rationale behind the views of the differing agencies normally should result in agreement on classification guidance.

(c) If, after exchange of rationale, one or more agencies (not at higher echelon than the preparing agency) remain in disagreement, the preparing agency:

(1) Makes its own decision;

(2) Advises the differing agencies of its decision and intent to proceed with publication of the classification guidance; and

(3) Publishes the guidance unless notified within 15 workdays that another agency is referring the matter to a higher echelon.

§ 850.29 Research, development, test, and evaluation programs.

The classification guidance which must be approved by the Director, Defense Research and Engineering, or by the Assistant Secretary of the Air Force (Research and Development) is the guidance included in the appropriate program document. (The term "master security classification guide" in subparagraph b is the proposed classification guidance prepared by the command having management responsibility.)

(a) In the approval process, the command meets its responsibility by including such proposed guidance in the program document submitted to HQ USAF. Deputy Chief of Staff, Research and Development, assures that the approval requirements of this paragraph of the DOD ISPR are met.

(b) On receipt of the approved classification guidance, the command with management responsibility prepares the actual classification guide. Subsequent changes to guidance do not require approval of the Director, Defense Research and Engineering, or the Assistant Secretary of the Air Force (Research and Development) if they are consistent with the initially approved guidance.

§ 850.30 Distribution of guides to office, Secretary of Defense.

Classification guides (and other classification guidance) are furnished to each organization or activity having an official interest in the subject matter. In addition, one copy of each formal classification guide is furnished by the originator, to: Directorate for Security Review, Office, Assistant Secretary of Defense (Public Affairs); Director of Information Security, Office, Deputy Assistant Secretary of Defense (Security

Policy); HQ USAF/SPIB; SAF/OIS; and Deputy Inspector General for Inspection and Safety (HQ USAF/IGD) Norton AFB CA 92409.

§ 850.31 Procedures.

Overall classification management responsibilities for the Air Force are assigned to HQ USAF/SPIB.

§ 850.32 Final decision.

Referrals to OSD under this paragraph shall be made by HQ USAF/SPIB.

§ 850.33 Tentative classification.

Material forwarded to HQ USAF should be addressed to the Air Staff office having primary interest in the subject matter or, if this cannot be determined, to HQ USAF/SPIB.

§ 850.34 Classification of information previously determined to be unclassified.

Send an information copy of any classification made under this paragraph to HQ USAF/SPIB. The letter of notification will be classified Confidential and will contain a regrading statement: "Regraded Unclassified when upgrading action is completed."

Subpart D—Downgrading and Declassification

§ 850.35 Dates or events carried forward.

The start date for computing downgrading and declassification in the GDS is the date on which the information was originally classified. This start date applies throughout the classified life of the information, and is not affected by subsequent use of the information in new documents.

(a) Classification guides and DD Forms 254 should specify the downgrading and declassification dates as computed from the start date, and any reissuance of the guidance should carry these same dates forward.

(b) Insert the original declassification date in the "Declassify on _____" space in the GDS marking on each document classified on the basis of containing the information, regardless of the date of the new document. (Note: Classification guides and DD Forms 254 often deal with categories of information rather than with specific data. When information within a category changes, as in the case of test results or frequencies of electronic equipment, the person revising the classifications guide may determine that dates in the original guidance should not be arbitrarily carried forward.)

§ 850.36 General provisions.

Each Top Secret classification authority forwards to HQ USAF/SPIB an information copy of any written policy direction authorizing classes or types of information to be exempted from the GDS. If the policy direction is contained in a classification guide, forwarding the guide under DOD ISPR para 2-307 meets this requirement. HQ USAF/SPIB reviews policy direction to ensure that exercise of exemption authority is held to a minimum.

§ 850.37 Restricted data and formerly restricted data.

Restricted Data and Formerly Restricted Data are exempt from the General Declassification Schedule in accordance with category (2), DOD ISPR para 3-301. Regrading or declassification of Restricted Data is a determination that must be made by the Energy Research and Development Administration. Declassification of Formerly Restricted Data is a joint DOD-ERDA determination. Air Force focal point for coordination with ERDA in such matters is HQ USAF/SPIB.

§ 850.38 Submission of requests for review.

Request for review of Air Force records from the general public are received and processed by HQ USAF/DADP.

§ 850.39 Action on requests for review.

HQ USAF/DADP:

(a) Acknowledges receipt of the request;

(b) Determines whether the records can be obtained with only a reasonable amount of effort;

(c) If the records cannot be obtained, advises the requester in accordance with the DOD ISPR para 3-401;

(d) If the records can be obtained, requests the Air Staff office having primary functional interest in the subject matter to review the records and provide a basis for reply;

(e) Replies to the person or agency that requested review;

(f) Maintains records of all requests and action taken on each.

§ 850.40 Action on requests for review, appeals.

For Air Force records, the right of appeal is to the Air Force Classification Review Committee (AFCRC) through HQ USAF/SPI.

§ 850.41 Notification of changes in classification or of declassification.

Change or cancel the classification of a standard or specialized publication or any portion thereof by issuing a numbered change to the publication. Record the change or cancellation in the appropriate accountability record and, in the case of a Top Secret document, in the Top Secret Control Register. Adjust accountability accordingly.

Subpart E—Marking

§ 850.42 Overall and page marking.

The classification marking must be in letters larger than those used in the text of the document, except in the case of documents produced on rapid printing automated data processing equipment. In the latter case, the printwheels of the equipment may be used, provided that the classification markings are made clearly distinguishable from the printed text of the document.

§ 850.43 Paragraph marking.

Mark each section, part, or paragraph of a classified document, even if there are no differences in the classification.

(a) When appropriate, add the abbreviation "CNWDI" for Critical Nuclear Weapon Design Information to the "RD" paragraph marking. When two or more abbreviations are combined, separate by hyphens. For example: (C-RD) or (S-RD-CNWDI). See §§ 850.56 and 850.59 for examples of correct marking. Note that the abbreviations are for internal use only, not for overall marking of pages or material, except that they may be used on photographic negatives (including microfilm) when necessary to avoid obscuring important elements of the photograph.

(b) When abbreviations are used on a negative, add the full markings on any prints made from the negative.

§ 850.44 Subjects, titles, abstracts, and index terms.

When the subject or title of a NATO, SEATO, CENTO, or other foreign classified document is not marked to indicate whether or not it is classified, it is afforded the same degree of protection required for the document.

§ 850.45 Transmittal documents.

Mark a document that transmits Restricted Data-Critical Nuclear Weapon Design Information with the added notation: "Attachment contains (as appropriate)." In the case of multiple attachments, indicate which contains such information.

§ 850.46 Electrically transmitted messages.

Mark classified messages as prescribed in AFM 100-20. Record copies of classified messages will be marked to identify the classifier (see DOD 5200.1-R, para 2-200).

(a) When a message contains Critical Nuclear Weapon Design Information, the notation "CNWDI" immediately follows the classification in the first item of information in the text.

(b) Directives that establish special access restrictions must also specify the type of handling (for example, Special Category or Limited Distribution) required for electrical transmissions. (AFM 100-20, Management of Electrical Record Transmissions, prescribes the marking procedures when special access material is electrically transmitted.)

§ 850.47 Photographs, films and recordings (transparencies and slides).

The border, holder, or frame of the first slide in a set must reflect the classification of the set downgrading/declassification notation, the office of origin and the date. The abbreviations specified in § 850.43 may be used where space on the holder is limited.

(a) An individual slide, permanently removed from a set must, at the time it is removed, also be marked with the appropriate downgrading notation, date, and office of origin. Other slide borders, holders, or frames within the set require only the classification marking.

(b) For Top Secret slides, the border, holder, or frame of the first slide in a set and any slide permanently removed from a set, must additionally be marked

to depict copy number and control/register page number.

§ 850.48 (Added) Photographs, films, and recordings, magnetic tapes.

When audio, video, or digital magnetic tape is used to record classified information, mark the tape reel to reflect the highest level of classified information that has ever been recorded on that tape or since it was last degaussed by approved degaussing equipment (see DOD 5200.28M). Tapes degaussed in accordance with DOD 5200.28M are unclassified.

§ 850.49 (Added) Photographs, films, and recordings (magnetic drums, discs, and disc packs and magnetic cards).

When removed from the processing machine, each individual drum, disc, or disc pack which has not been declassified by an approved declassification procedure (over-written or erased by a magnet, see AFR 300-8 Security Requirements for Automatic Data Processing Systems (ADPS)) is marked with the highest classification of material ever recorded on it, and bears a label showing current contents and classification data. If stored in a container, e.g., card file boxes, the container also shows the highest assigned classification.

§ 850.50 Pages of ADP listings.

Printwheels of the equipment may be used to mark the classification on first and last pages and front and back covers, if any, provided that the markings are clearly distinguishable from the printed text.

§ 850.51 Regrading and declassification markings.

These actions will be taken whenever this material is removed from file or storage or when notified of regrading action. Regrading/declassification action will be annotated on the accountability record of the document.

§ 850.52 Downgrading and declassification for ADP products.

Magnetic tapes, discs, disc packs, and drums on which classified information has been recorded are by definition classified documents. However, due to the dynamic capabilities of modern computers, the machine marking of ADP products is not always programmatically feasible or cost productive. Therefore:

(a) When the data base does not contain downgrading and declassification instructions in files, the Data Processing Installation will advise each ADP customer that the downgrading and declassification instruction must be applied to the ADP end product (for example, printed products or microform products) immediately after receipt.

(b) When the ADP customer is not the OPR for the files accessed, the correct marking must be secured from the OPR for the file.

(c) When multiple downgrading and declassification instructions are used, only the most restrictive will be applied to the ADP end product.

§ 850.53 Downgrading and declassification, use of indefinite dates.

The date entered in the "Declassify on" line must be as early as possible. In no case shall it exceed 30 years from the date of the document containing only information over which the DOD exercises original classification authority. Terms such as "Indefinite" will not be used in lieu of a specific date.

§ 850.54 Remarking material already marked Group 1, 2, or 3, or not group marked.

Marking a Group 3 document "Excluded from General Declassification Schedule" does not nullify the downgrading schedule that has heretofore applied to Group 3 material: downgrade at 12-year intervals; not automatically declassified. Also, note that the "Excluded from * * *" Marking does not preclude setting of dates for automatic downgrading and declassification; the original classification authority is encouraged to take such action.

§ 850.55 Restricted data.

For classified information or material containing Critical Nuclear Weapon Design Information, the following additional marking is required: CRITICAL NUCLEAR WEAPON DESIGN INFORMATION—DOD DIRECTIVE 5210.2 APPLIES.

Documents containing such information that originated before January 18, 1969 require the additional marking only if withdrawn from files for action or review.

§ 850.56 Sample letter, preparation of classified correspondence.

TOP SECRET

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C.
20314

REPLY TO ATTN OF: SPIB 1 May 1975

SUBJECT: Preparation of Classified Correspondence (U)

TO: AFLC/SP

1. (C) Use the same format as for unclassified correspondence. Mark for classification as illustrated herein. Markings in this letter show that all portions of paragraph 1 are Confidential and that other portions of the letter are classified as follows:

a. Subject, paragraphs 3 & 4, basic (first) portion of paragraph 2 and subparagraph 2b: Unclassified.

b. Subparagraph 2a: Top Secret.

2. (TS) Copy numbers must be assigned to Top Secret documents. Top Secret documents must include instructions prohibiting or permitting reproduction. Do this by stamping or by including a statement in the text. For example: (U)

a. (TS) "Reproduction of paragraph 2 is prohibited without consent of (fill in office of origin)."

b. (U) "Reproduction authorized to extent necessary to accomplish an official government function."

3. (U) See pertinent sections of this regulation for added markings required for certain material (e.g., Restricted Data, foreign information).

4. (U) This letter is marked to show predetermined downgrading and declassification dates earlier than the General Declassification Schedule.

FOR THE CHIEF OF STAFF

JOHN J. DOE, Major General, USAF
The Chief of Security Police

Copy 1 of 3 copies

TOP SECRET

DOWNGRADE TO:
SECRET on 1 May 76
CONFIDENTIAL on 1 May 77
DECLASSIFY on 1 May 78
CLASSIFIED BY: HQ USAF/The Chief of Security Police

(This sample letter is Unclassified)

§ 850.57 Sample letter, letter of transmittal for classified documents.

TOP SECRET

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C.
20314

REPLY TO ATTN OF: SPIB 1 May 1975

SUBJECT: Letter of Transmittal for Classified Documents (U)

TO: TAC/SP

1. This letter illustrates requirements for preparing a letter used to transmit classified documents.

2. At the top and bottom of the transmittal letter mark the highest classification of any information in the letter itself or in any of its attachments. In addition, if the letter itself contains classified information apply paragraph marking as shown in Figure 4-1.

3. If the transmittal letter is classified at a lower level than the attachment(s), or is unclassified, so state. Do this by including a final paragraph such as 5, or by stamping such as:

When separated from attachment(s) this letter is _____.

4. Show the classification and number of copies of each classified attachment. For Top Secret attachments, also show the copy number.

5. This letter is Confidential (or unclassified) when separated from attachment(s).

FOR THE CHIEF OF STAFF

JOHN J. DOE, Maj Gen, USAF
The Chief of Security Police

3 Atchs
1. Draft AFR 205-99(S)(2 cys)
2. Draft AFR 205-1(U)
3. WMP 72-1(TS)(cy #45)

TOP SECRET

(This sample letter is unclassified)

§ 850.58 Sample indorsement, indorsement to classified letters.

TOP SECRET

1st Ind to HQ USAF/DA Ltr, 25 Oct 72, Indorsements to Classified Letters

HQ USAF/SPIB 1 May 1975

TO: CINCAD/SP

1. This illustrates requirements for preparing an indorsement to a classified letter or to a letter used to transmit classified attachments.

2. At the top and bottom of the indorsement mark the highest classification of any information in the indorsement itself or in the basic letter or any attachments thereto. In addition, if the indorsement itself contains classified information apply paragraph markings as shown in Figure 4-1.

3. If the indorsement standing alone is unclassified, so state. This may be done by including a final paragraph such as 4, below, the preferred method, or by an appropriate typed or stamped notation:

When atch(s) ____ is(are) withdrawn or not attached, this indorsement is unclassified.

or

This indorsement is unclassified when separated from the basic correspondence.

4. This indorsement does not contain classified information.

FOR THE CHIEF OF STAFF

JOHN J. DOE, Maj Gen, USAF
The Chief of Security Police

3 Atch
nc

TOP SECRET

(This sample indorsement is unclassified)

§ 850.59 Sample letter, marking restricted data (RD) and formerly restricted data (FRD) documents.

SECRET

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C.
20314

REPLY TO ATTN OF: SPIB 1 May 1975

SUBJECT: Marking Restricted Data (RD) and Formerly Restricted Data (FRD) Documents (U)

TO: CINCUSAFE/SP

1. (U) Markings in this sample letter indicate that:

a. The subject line and paragraphs 1, 4, 5 and 6 are unclassified.

b. Paragraph 2 is Confidential RD.

c. Paragraph 3 is Secret FRD.

d. The document as a whole is designated RD.

2. (C-RD) If a letter contains Critical Nuclear Weapon Design Information, add "CNWDI" to the paragraph markings as appropriate; for example: "(S-RD-CNWDI)." Such a letter would also bear, in addition to the RD notation at the bottom of this letter, the marking:"CRITICAL NUCLEAR WEAPON DESIGN INFORMATION - DOD DIRECTIVE 5210.2 APPLIES."

3. (S-FRD) A letter containing FRD, but not RD, would bear, instead of the RD notation at the bottom of this letter, the marking:

FORMERLY RESTRICTED DATA
Unauthorized disclosure subject to administrative and criminal sanctions. Handle as Restricted Data in foreign dissemination. Atomic Energy Act of 1954.

4. (U) Where both RD and FRD are present, the RD takes precedence and the FRD marking is omitted; for example, this letter is designated RD even though the RD part is only Confidential while the FRD part is Secret.

RESTRICTED DATA
This material contains Restricted Data as defined in the Atomic Energy Act of 1954. Its dissemination to any unauthorized person is prohibited.

SECRET CLASSIFIED BY: AF Security Classification Guide for Nuclear Weapons, May 1973

(This sample letter is unclassified)

SECRET

5. (U) The RD and FRD marking is in itself evidence of exemption from predetermined downgrading or declassification. Further notation in this regard is not required. However, a "Classified by" line is necessary.

6. (U) If this letter had two or more pages, the RD, FRD and CNWDI page markings and the "Classified by" notation would not be placed on the second and subsequent pages. Paragraph marking, and the usual page marking for classification level, would be required throughout the document.

FOR THE CHIEF OF STAFF

JOHN J. DOE, Maj Gen, USAF
The Chief of Security Police

SECRET

(This sample letter is unclassified)

Subpart F—Safekeeping and Storage

§ 850.60 General policy.

The security evaluation of local conditions is accomplished by the official responsible for the safekeeping of the classified material. When conditions in the storage environment do not provide an acceptable degree of security, he provides supplemental safeguards.

§ 850.61 Storage of classified material, Top Secret.

The storage of Top Secret material is limited to storage facilities under the control of designated primary or subordinate Top Secret Control Officers, unless otherwise authorized in writing by the official that appointed the Top Secret Control Official.

(a) Containers. Standards for Class A vaults are prescribed in AFM 88–15, Air Force Design Manual—Criteria and Standards of Air Force Construction.

(b) Alarmed Areas. The security force must be able to respond in sufficient time to have a reasonable opportunity to preclude the compromise of classified material. Such response time normally should not exceed five minutes.

(c) (Added) Continuous Surveillance. An area under continuous surveillance by authorized personnel, provided the local official responsible for safeguarding the material has determined that the protection afforded is at least equal to that prescribed in the DOD ISPR, para 5–102a2. Such areas shall be designated "Controlled Areas" in accordance with AFR 125–37, Protection of USAF Resources.

§ 850.62 Storage of classified material, secret and confidential.

Standards of Class B vaults and secure storage rooms are prescribed in AFM 88–15. (The standards for secure storage rooms were upgraded by Change 2 to that manual on December 30, 1971. Secure storage rooms constructed before that date under less restrictive criteria may continue to be used for the storage of Secret and Confidential material when supplemental safeguards are adjudged by local authorities to provide adequate protection in accordance with the DOD ISPR, and § 850.60 and § 850.63 of this part.

§ 850.63 Storage of classified material, non-GSA approved containers.

As a minimum such containers must have been modified in accordance with TO46A3–1–502. Lock bar cabinets are not approved for the storage of CRYPTO material.

§ 850.64 Storage of classified material, restrictions on use of storage containers.

Do not store funds, weapons, medical security items, controlled drugs, or precious metals in any safe, security filing cabinet, or other safe-type filing container used for the storage of classified material. (A commander may waive this restriction in emergencies. He may also waive it temporarily when acceptable storage facilities are not available, but in such a case he shall take prompt action to procure the required storage facilities.)

§ 850.65 Storage of classified material, transient couriers.

Installation commanders will provide a repository for the overnight storage of classified documents. Where a receipt is required, the AF Form 12, Accountable Container Receipt will be used.

§ 850.66 Procurement and phase-in of new storage equipment, preliminary survey.

The scope of survey should be limited to a single installation unless there is reason to believe that a wider survey would permit cost effective redistribution.

§ 850.67 Procurement and phase-in of new storage equipment, purchase.

Submit waiver requests through command channels to HQ USAF/SPID.

§ 850.68 Designations and combinations, numbering and designating storage facilities.

Enter this number on AF Form 502, Persons Responsible for Safe, and post as prescribed in § 850.70.

§ 850.69 Designations and combinations, combinations to containers, changing, requirement for semiannual combination change.

The combinations to vaults or containers used to store classified material which has been originated by International Pact Organizations shall be changed at least semiannually.

§ 850.70 Designations and combinations, combinations to containers (Use of AF Form 502).

Post AF Form 502 conspicuously on the outside of the security container. When more than four persons have knowledge of the combination to a vault or security filing cabinet, list the names of only four persons on the AF Form 502. The combinations of vaults and containers used for the storage of classified material should never be physically recorded in any way. However, if it becomes necessary to record combinations to provide for efficient operation and for emergencies, commanders are authorized to record combinations in a central location.

§ 850.71 Designations and combination, combinations to containers, repair (of storage containers).

The requirements for inspection, preventive maintenance, and repair of filing cabinets authorized for storage of classified material are contained in TO 00–20–F–2. All containers drilled to gain access shall be promptly repaired and inspected to insure that they operate properly and provide acceptable security. Use thereafter is limited to storage of material classified no higher than Confidential unless the drilled parts are replaced with new or repaired combination locks or drawer heads. Personnel performing maintenance on security containers, neutralizing lock-outs or repairing drilled parts will have security clearances to the level of the material stored in the containers.

§ 850.72 Designations and combinations, combinations to containers, turn-in.

Combinations to safes turned in to supply will be set on 50–25–50.

§ 850.73 Responsibilities of custodians.

Top Secret Control Officers and persons responsible for safeguarding Secret and Confidential material establish written procedures which clearly define the conditions under which classified material may be removed from the activity (see the DOD ISPR, paragraphs 8–100a and 8–200 for limitations on the hand-carrying of classified materials when in a travel status).

§ 850.74 Care during working hours, use of cover sheets.

A separate cover sheet may be used, if desired. AF Form 144, Top Secret Access Record and Cover Sheet, and AF Form 144a, Cover Sheet for Classified Information, are available for use.

§ 850.75 Care during working hours, plastic covers.

Plastic protective covers for documents are subject to image transfer. All personnel should be alert to this phenomenon, and should routlinely examine covers for image transfer each time they are removed from classified documents.

§ 850.76 Care after working hours.

Commanders and office chiefs may delegate area inspections (security checks) to appropriately cleared responsible personnel.

(a) Containers should be locked by the person to whom the container is assigned and checked by another individual. When another person is not reasonably available the person locking the container will also check it and record both actions on AF Form 301.

(b) Checks of bookcases and the interiors of desks should be made periodically.

(c) A record of each inspection which verifies that each storage facility has been properly secured is made on AF Form 301, Security Container Check Record, and AF Form 302, Room or Area Security Inspection Record. Keep these records until superseding records are initiated, and then destroy them as outlined in AFM 12–50, Disposition of Air Force Documentation.

§ 850.77 Emergency destruction.

Emergency plans shall provide for emergency destruction to preclude capture of classified material in those areas where the commander determines such is required.

(a) This determination shall be based on an overall common sense evaluation of the following factors:

(1) Level and sensitivity of classified material held by the activity.

(2) Proximity of land-based commands to Communist controlled countries or potentially hostile forces.

(3) Flight schedules or unit deployment near Communist controlled coun-

tries or in the proximity of potentially hostile forces.

(4) Size and armament of land-based commands.

(5) Sensitivity of operational assignment (contingency planning should also be considered).

(6) Potential for aggressive action of hostile forces.

(b) When preparing emergency destruction plans, consider the following:

(1) Reducing the amount of classified material held by a command shall be the initial step toward planning for emergency destruction.

(2) Along with destroying or returning unneeded classified material, consider storage of less frequently used classified material at more secure locations in the same geographical area.

(3) Of the classified material which must be retained at a vulnerable site, as much as possible should be transferred to a medium more easily destroyed than paper documents (that is, microfilm, water soluble paper, etc.), or in the case of equipment, exchanged for similar equipment with a built-in destruction capability.

(4) In the plan, emphasis shall be placed on the priorities for destruction, designation of personnel responsible for destruction and the designation of places and methods of destruction.

(5) The plan shall provide authorization for the senior individual present in an assigned space containing classified material to deviate from established plans when circumstances warrant.

(6) The importance of beginning destruction sufficiently early to preclude loss of material must be emphasized.

(c) The emergency destruction plan shall require that classified material holdings be assigned a priority for emergency destruction. Priorities shall be as follows:

(1) First Priority. All Top Secret material.

(2) Second Priority. All other special access material.

(3) Third Priority. All other Secret and Confidential material.

(d) In determining the method of destruction, any method specified for routine destruction of classified material or any other means of reasonably ensuring the complete destruction of the material may be used. Ideally, the destruction method shall provide for early attainment of a point at which the destruction process is irreversible. As a last resort, and where none of the methods previously mentioned can be employed, the use of other means (such as dousing the classified material with a flammable liquid and igniting it, garbage grinders, sewage treatment plants, boilers, etc.) should be considered.

(e) After a threat analysis has been developed to support the emergency destruction section of the emergency plan, it may be determined that some special equipment will be required to increase the command's capacity for emergency destruction and the speed with which it can be accomplished. When a requirement exists for equipment not in the GSA or DOD inventory, the requirement shall be made known to HQ USAF/SPIB with supporting details.

(f) In the event of emergency destruction, the facts surrounding the destruction shall be reported as soon as possible to HQ USAF/SPIB. The report shall also contain the best possible identification of classified material that may not have been destroyed.

(g) Drills shall be conducted periodically to ensure that personnel are familiar with the emergency plan. Such drills shall be used to evaluate the anticipated effectiveness and shall be the basis for improvements in planning and equipment use, as required.

§ 850.78 Emergency planning.

The perimeter guard force suggested by this paragraph shall be manned by personnel assigned to the affected unit or activity, rather than from security police forces who will be otherwise committed during emergency periods.

§ 850.79 Safeguarding EOD publications.

Nuclear weapon EOD publications known as "EOD Procedures," when located on foreign soil, must be stored in a US duty area that is manned 24 hours a day by US personnel, or in alarmed areas or containers where the alarm system is continuously monitored by US personnel. An assured document destruction capability must be provided to ensure that EOD procedures, if necessary, may be destroyed in a minimum of time.

Subpart G—Safeguarding Large Items of Classified Material

§ 850.80 General.

(a) When the size, bulk, or nature of an item of classified material precludes its storage in a security filing cabinet, vault, or secure storage room, the responsible commander shall determine the security measures required to provide comparable protection. The storage of such material in Restricted Areas (AFR 207–1) and Controlled Areas (AFR 125–37) is authorized and encouraged when the protection afforded is comparable to the standards prescribed here for the classification category involved.

(b) When an item of equipment (other than an aircraft) is classified because it contains one or more classified components, the security safeguards should be commensurate with the effort required to gain unauthorized access. For example, when it logically would require a measurable number of manhours to gain unauthorized access, a basis can be established for requiring guard checks at appropriate intervals.

§ 850.81 Safeguarding classified equipment on aircraft.

(a) Top Secret Material. When aircraft that have Top Secret equipment installed are designated Priority A and are protected in accordance with the applicable system security standards in AFR/AFM 207 series directives, no additional security force protection is required. Aircraft not designated security Priority A, but having Top Secret equipment installed, are kept under continuous surveillance by an individual or an intrusion detection alarm system. A two-man armed response team is maintained with an assured capability of responding within five minutes. Personnel used for surveillance and response duties must be US nationals and be the subject of a favorable ENTNAC or, if the material is exposed to view, a favorable BI.

(b) Secret or Confidential Equipment At USAF Bases. Aircraft with Secret or Confidential equipment installed are protected as follows:

(1) The standards prescribed for Top Secret material; or

(2) During normal operating periods personnel of the unit possessing the aircraft provide surveillance over the aircraft and, as practicable, the boundary of the restricted area.

(a)) The owner-unit must manage the personnel work schedules so that the aircraft has continuous security coverage. As a minimum, at other times, a security police patrol makes periodic checks of the aircraft parking area.

(b) Establish local procedures between the security force and the unit possessing the aircraft defining the daily change in security responsibility. As a minimum, a two-man security police patrol armed response to the aircraft with classified equipment installed.

(c) If a regular SAT is not maintained a two-man law enforcement patrol is tasked to respond to alarms. Additional procedures may be implemented by the local commander as he considers necessary after taking into account these factors: Physical characteristics of the classified equipment (fixed or removable; accessibility; ease of observation); local security environment; availability of security support.

(c) Secret or Confidential Equipment At Non-USAF Bases Within the 50 United States:

(1) In normal situations the commander preplans to provide for security which meets the standards for USAF bases. Any exception to this policy must be approved at no lower than wing commander level. The wing commander is responsible for evaluating the necessity of the flight, the degree of security that can be provided, and the general security environment at the airport where the aircraft will be located.

(2) In the event of emergency landing, the aircraft commander must make every reasonable effort to provide full security for classified equipment. If possible, keep the aircraft under surveillance until security support can be obtained from the nearest USAF unit. However, the actions taken are a matter for decision by the aircraft commander.

(d) Secret or Confidential Material At Other Non-US Bases:

(1) The commander preplans to provide security which meets the standards for USAF bases. However, when US aircraft are deployed at foreign military air bases, the major commander may approve the use of guards of the host nation if:

(a) The classified equipment installed on the deployed aircraft cannot be removed and has been determined to be disclosable to the host nation (AFR 200–9). (Disclosure review under AFR 200–9 solely to satisfy the requirements of this paragraph is not within the spirit and intent of AFR 200–9);

(b) It is not practicable to provide US surveillance or guards; and

(c) Equipment which may be subject to compromise by visual access has been appropriately shrouded.

(2) When use of foreign national guards is necessary, the responsible USAF commander should request that a standard of security be maintained comparable to that provided by USAF forces.

(3) In the event of emergency landing, (b)(2)(b) above applies.

Subpart H—Compromise of Classified Information

§ 850.82 Policy.

An incident involving classified information in which there is a deviation from the requirements of this directive is termed a security incident. Security incidents fall within four categories:

(a) Compromise (as defined in DOD 5200.1–R, para 1–305).

(b) Possible Compromise—Incidents in which it is suspected that unauthorized personnel possibly had access to classified information will be termed "possible compromise."

(c) Inadvertent Disclosure—When the inquiry or investigation determines that the individual(s) who had access to classified information had been subject(s) of favorable personnel security investigations the incident may be considered an inadvertent disclosure.

(d) Administrative Security Deviation. If an act or omission in conflict with this or other security regulations does not result in compromise or an inadvertent disclosure or results in a decision that the possibility of compromise is remote, the incident is categorized as an administrative security deviation. NOTE: Regardless of which of the four categories are finally applied, consideration must also be given to the applicability of para 13–400 of this regulation.

§ 850.83 Cryptographic information.

KAG ID is implemented in AF–KAG–IE. When CRYPTO designated material is compromised or compromise is suspected, it is reported to the organization COMSEC officer for the initiation of the actions required by AF–KAG–IE.

§ 850.84 Responsibility of discoverer.

Each person immediately protects all classified material which comes into his possession as a result of a security incident. He promptly places it under the safeguards of an established security system and reports the circumstances to his immediate supervisor, commander, or higher authority in the chain of command. He does not attempt to conduct any inquiry or investigation unless he is authorized to do so by this part or is directed to do so by competent authority.

§ 850.85 Preliminary inquiry.

A commander or supervisor who gains knowledge of a security incident is responsible for the initiation of a preliminary inquiry and the further actions required by this chapter. The inquiry should be expeditiously conducted by officers or equivalent grade civilian employees with demonstrated judgment and competence. No incident is officially termed a compromise, suspected compromise, inadvertent disclosure, or administrative security deviation until the completion of the inquiry. Repsonsibility for an inquiry into an incident involving classified material during transmission (other than by electronic means) or shipment is with the commander or chief who initiated the transmission or shipment. This principle does not apply when another activity under military control has been definitely identified as completely responsible for the incident.

§ 850.86 Preliminary inquiry, determining type of incident.

(a) In cases of inadvertent disclosure of classified defense information, the individuals who had access must be debriefed and warned against the consequence of further disclosure. If the debriefer determines that classified information has been passed to other persons whose trustworthiness cannot be determined or who cannot be debriefed, the incident is considered a compromise and a formal investigation is required. Assistance in conducting the debriefing may be requested by the most expeditious means from any commander or other responsible official who can do it most economically.

(b) When the determination is made that an administrative security deviation has occurred, the immediate commander or chief of the activity immediately takes corrective action, including disciplinary action, if appropriate, and records the matter is accord with AFM 12–50. This action normally is based on the preliminary inquiry without further formal investigation.

(c) If an incident is categorized as an administrative security deviation on the grounds that the information was improperly classified, then it is necessary to: assure that the information is declassified by proper authority; and determine if the incident is subject to the classification abuse reporting requirements of Subpart N.

§ 850.87 Preliminary inquiry, reporting requirements.

USAF reporting requirements are contained in § 850.100 and the other provisions of this part (See § 850.84).

§ 850.88 Preliminary inquiry, notifications.

Based on the inquiry, commanders or other appropriate Air Force Officials take actions and make the notifications required by § 850.100. Notification will not be delayed to obtain unknown details. Furnish known data and submit the additional information required below when it becomes available. A request for AFOSI investigative assistance is not a notification to HQ USAF. Notifications shall include the following specifics:

(a) Description of the classified material which has been subjected to compromise. Include office or headquarters that originated the material, date, subject, classification, special markings, etc.

(b) Full identification of the person(s) and activities involved.

(c) When espionage or other deliberate compromise/suspected compromise is involved, include a brief summary of the persons background.

§ 850.89 Investigation, USAF detailed procedures for the investigation of compromise or suspected compromise.

The responsible commander or chief of the activity concerned is the appointing authority. The appointing authority takes the following actions and those required by § 850.100 as a result of the specific conditions disclosed by the inquiry:

(a) Promptly appoints an officer, or a civilian employee with demonstrated judgment and competence, or a Board of Officers, to conduct a formal investigation. Investigations conducted by an investigating officer are in accordance with AFR 120–3 and AFM 120–3. Investigations conducted by Boards of Officers shall be in accordance with AFR 11–1. In the interest of brevity and clarity, limit the investigation to individuals and factors necessary to determine the facts, findings, and recommendations pertinent to the case. If at any time during the investigation a determination is made that compromise is no longer suspected, there is no compromise, or the possibility of compromise is remote, the investigating official(s) immediately notify the appointing authority, who, if he concurs, closes the case and takes whatever corrective measures are required (administrative or punitive or both). The appointing authority notified that no compromise occurred, stating the circumstances on which the decision was based.

(b) Responsibility should be fixed on a person rather than a position or office. Where the source of compromise/suspected compromise can be traced only to a command or office, the identification of any derelictions under this regulation should be established when appropriate. Investigating officials should not include specific recommendations concerning disciplinary action in their reports of investigation. This policy does not abrogate the requirement that responsibility be fixed, nor preclude the citation of the basis for determining responsibility or of appropriate mitigating circumstances related to the incident.

(c) Personnel involved in the case normally are not permitted to absent themselves from their station by reason of leave, temporary duty, or permanent change of station until the investigation is completed. However, when the appointing authority deems appropriate, a designated official may accept a sworn

statement from a person subject to investigation (after proper warning pursuant to Article 31 UCMJ, or the 5th Amendment to the U.S. Constitution), in lieu of personal appearance.

(d) Other USAF commanders or activities requested to render assistance in expediting investigations must comply promptly. Replies normally are forwarded through command channels within five duty days following receipt of request for assistance.

(e) The completed report of investigation should be submitted to the appointing authority within 15 workdays after the date the investigating official or board of officers is appointed. If an unavoidable delay is encountered or anticipated, the appointing authority may authorize extensions. In such cases he notifies the final approving authority of his action and the reasons therefor.

§ 850.90 Investigation, special investigative requirements.

Under the conditions set forth below, the appointing authority refers security incidents to the AFOSI with a request for investigation. An AFOSI investigation does not substitute for a commander's investigation required by this paragraph, but becomes an integral part thereof by referral or as prescribed by Part 952.

(a) Cases which involve espionage and deliberate compromise described in DOD ISPR, para 6–107. The appointing authority refers to the AFOSI for investigation any other security incident which suggests willful intent, gross negligence, or any other incident which indicates that any person has intentionally and for an illicit purpose gained or attempted to gain access to classified national security information.

(b) Cases which are sufficiently complex to be beyond the appointing authority's capability or resources, and which come within the functions and responsibilities of the AFOSI.

§ 850.91 Investigation, modification of investigation and reporting requirements where incidents occur in hostile or politically denied areas.

When incidents which result in compromise or suspected compromise occur in hostile or politically denied areas and formal investigation is impractical, the responsible commander may waive investigation. He must notify the activities shown in § 850.100 of the results of the inquiry and include a statement in the notification that a determination has been made by him that a complete investigation is not practical. The notification must include:

(a) Identification of all classified material compromised or suspected of having been compromised, including headquarters of origin, subject, date, classification of the material, and other specifics.

(b) The date on which the incident occurred.

(c) A resumé of the circumstances contributing to the incident, including any actions, omissions, and security deficiencies of a personal, physical, and procedural nature.

(d) Any recommended action that should be taken by the OPR of the information or by higher headquarters to mitigate possible damages or to preclude further incidents.

§ 850.92 Responsibility of authority ordering investigation review.

On receipt of the report of investigation, the appointing authority reviews the report for adequacy and completeness. Use AFM 120–3, attachment 2, "Check List for Reviewing Officer," to insure that the report of investigation and other required actions have been accomplished properly.

§ 850.93 Responsibility of authority ordering investigation approval.

When the report is adequate and complete, the appointing authority indicates his approval, disapproval, or partial approval of the report, and implements the recommendations he considers appropriate. When the report is forwarded, a statement of evaluation is included in his review to indicate any area of security weakness, exposed by the investigation, which is not within the scope of his authority. The DOD Industrial Security Regulation (DOD 5220.22R), as supplemented by AFR 205–4, requires specific procedures applicable to DOD contractors.

(a) Disciplinary Action. The appointing authority takes disciplinary action when appropriate. If he considers that personnel of another command or activity should be disciplined, based on the contents of the report of investigation, he forwards his recommendations with a copy of the report of investigation to the commander or other appropriate superior of the person(s) concerned. Disciplinary action may be administrative or judicial in nature. For initiation of disciplinary action against contractor employees see the DOD Industrial Security Regulation, (DOD 5220.22R). It is not the intent of this Subpart that harsh administrative penalties or judicial actions be initiated against dedicated persons with records of good security practice who occasionally commit violations through simple human error. Action in such cases is discretionary with the appointing authority. This statement of policy does not apply to cases involving repeated violations, gross negligence, espionage, or other willful or deliberate breaches of security regulations or appropriate statutes.

(b) Declassification for Use as Evidence. When a decision is made to recommend prosecution of a person for criminal violation of Federal statutes, all classified information involved must be reviewed for declassification before use as evidence in criminal prosecution. Federal courts normally do not permit closed trials to safeguard classified information, and the Department of Justice usually does not consider prosecution unless the material used in evidence is unclassified. Similar declassification action should be considered before court-martial proceedings. Direct contact with the classification authority is authorized.

(c) Accountability for Lost Documents. Accountability for lost documents is not dropped until after approval of the investigation by the final reviewing authority within USAF. Classified material reported as lost and subsequently recovered is entered into the appropriate accountability system. Notations are made in accountability records. The investigation may be reopened by the appointing authority and followed through to its conclusion, if appropriate.

(d) Notification to the OPR. The appointing authority promptly notifies the OPR or office of origin of any facts, findings, or conclusions which may have a bearing on the originators action to mitigate the circumstances; otherwise, reports of investigation need not be forwarded to the originator of the classified material.

(e) Forwarding Reports of Investigation. The appointing authority forwards reports of investigation through channels to the major command. Incidents reported under § 850.100, rules 3 thru 10, are reviewed by HQ USAF/SPIB. Final review of all other cases is conducted at the lowest level of command that exercises general court-martial authority, unless the major command elects to conduct this review.

(1) Transmittal by Appointing Authorities. The appointing authority forwards the report to his immediate commander within 15 workdays after receipt.

(2) Review by Intermediate Commanders. Each intermediate commander through whom the report is submitted reviews the report and sends it to the higher echelon of command indicating review and comments within 15 workdays of receipt, or returns it to the appointing authority for other action.

(3) Review by Major Command Headquarters. When USAF review is required, major commanders forward the reports of investigation to HQ USAF within 15 workdays of receipt.

(4) If reports of investigation concern incidents committed in the Office of the Secretary of the Air Force or in HQ USAF, the 1143 ABS/SP conducts the review and takes appropriate followup action for the Secretary of the Air Force or the Chief of Staff, as appropriate. When the inquiry reveals that the incident has been categorized as an administrative security deviation or inadvertent disclosure without compromise, the incident is closed at directorate level unless it has been initially discovered or reported by the 1143 ABS/SP.

§ 850.94 Responsibility of originator, review by originator.

On receipt of notification that classified information has been compromised or subjected to compromise, the originator of the classified information verifies that all elements of the information involved were classified under his original classification authority. If he finds that some element of information was originated by another activity, he

promptly relays the notification to the appropriate original classification authority. The originator promptly notifies the reporting activity of the current classification of the information or that the information is now unclassified.

§ 850.95 Responsibility of originator mitigating actions.

In addition to the review required by the DOD ISPR (para 2–313) and this paragraph, the originator considers further actions which would tend to nullify or inhibit hostile forces from exploiting the compromise. This is the most important consideration in any compromise case. Appropriate actions include but are not limited to changing, deleting, or substituting specific provisions of the classified plan or operation, or action which would tend to invalidate the accuracy of the compromised information. It is recognized that mitigating actions of this type are not always feasible. The decision to take mitigating action or accept the calculated risk is a matter of judgment on the part of the original classifying authority. The probability of actual compromise based on the reported circumstances is a key factor in this decision. Direct communication between the originator and the appointing authority is authorized and encouraged.

§ 850.96 Espionage and deliberate compromise.

When an Air Force official having responsibility for classified security information determines or suspects that classified information has been the object of espionage or deliberate compromise, he forwards a report to HQ USAF/IGZ by the most expeditious means possible. Notifications by commanders or other Air Force officials are not delayed for lack of full information. Followup reports with supplementary information are submitted as it becomes available. In no instance are initial notifications delayed more than 24 hours beyond the time that an Air Force official suspects espionage or other deliberate compromise.

§ 850.97 Unauthorized absentees.

This report is made to the AFOSI activity that services the command.

§ 850.98 Compromise of special access information.

For security policy and procedures for reporting the compromise/suspected compromise of classified information pertaining to special access programs, see the directive governing the safeguarding of that particular information. For example, Cryptographic AFKAG–IE, COMINT and Special Activities Office (SAO) information, USAF INTELS 201–1 and 201–4; SIOP, AFR 205–25.

§ 850.99 Violations of the Atomic Energy Act of 1954.

On receipt of a preliminary report indicating that Restricted Data material has been subjected to compromise and that a criminal violation of the Atomic Energy Act of 1954 may have occurred, the responsible authority promptly reports the facts to the AFOSI activity that services the command. The report must state the date and nature of the violation, and a description of the information and material involved. AFOSI notifies the nearest office of the Federal Bureau of Investigation in accordance with the Atomic Energy Act of 1954.

§ 850.100 Mandatory actions for conditions revealed by the initial inquiry.

Rule	(A) If the commander's inquiry reveals that—	(B) Conduct debriefing	(C) Take local action	(D) Notify— OPR	(E) Notify— SPIB [1]	(F) Notify— AFOSI [2]	(G) Notify— MAJCOM	(H) Investigate
		Then the commander or other proper authority must—						
1	No compromise/suspected compromise occurred.		×					
2	Unauthorized disclosure was made to a trustworthy person (inadvertant disclosure).	×	×					
3	Espionage or other deliberate compromise of classified information is suspected or believed to have occurred.			×	×	× [3]	×	×
4	An unauthorized disclosure of restricted data or formerly restricted data was made to a foreign national or nation.				×	×	×	×
5	Restricted data or formerly restricted data is compromised or suspected of compromise.			× [4]	×		×	×
6	Restricted data or formerly restricted data is compromised or suspected of compromise and a criminal violation of the AEA of 1954 is probable.			× [4]	×	× [3]	×	×
7	Top secret information is compromised or is suspected of compromise.			×	×		×	×
8	The incident may be made public by news media.			×	×		×	×
9	The incident involves or affects or appears to involve or affect classified information compromised or suspected of compromise of an activity outside the DOD.				×		×	×
10	NATO, SEATO, and CENTO, confidential and above, or classified information of another nation is compromised or suspected of compromise.				×		×	×
11	U.S. secret or confidential, other than rules 3 through 9 above and the OPR involved is within the DOD.		× [5]	×		×	× [7]	×
12	The incident occurred in a hostile or politically denied area.			×	× [8]		×	
13	Special access information is involved			×	× [9]	× [9]	×	×

[1] HQ USAF/SPIB, Washington, D.C. 20314.
[2] AFOSI unit that services command or activity.
[3] For investigative assistance.
[4] Only if OPR is within DOD.
[5] Send copy to SAF/OI, Washington, D.C. 20330.
[6] Insofar as possible, incidents involving confidential material to be resolved at or below MAJCOM.
[7] Unless otherwise directed by major commander.
[8] Only as required by rules 3 through 10.
[9] HQ USAF/SPIB and AFOSI notification is not required when the incident involves compartmented intelligence

Subpart I—Access, Dissemination, and Accountability

§ 850.101 Determination of trustworthiness.

See AFR 205–32, USAF Personnel Security Program.

§ 850.102 Continuous evaluation of eligibility.

See AFR 205–32.

§ 850.103 Administrative withdrawal of security clearance.

See AFR 205–32.

§ 850.104 Revocation of security clearance for cause.

See AFR 205–32.

§ 850.105 Access by persons outside the executive branch, Congress.

Refer all requests for classified information initiated by the Congress or its committees or members to the Secretary of the Air Force (Director of Legislative Liaison, SAFLL) in accordance with AFR 11–7, Air Force Relations with Congress.

§ 850.106 Access by persons outside the executive branch, representatives of General Accounting Office (GAO).

Procedures for disclosing classified information to GAO representatives are prescribed in AFR 11–8, Air Force Relations with General Accounting Office (GAO).

§ 850.107 Access by persons outside the executive branch, industrial, educational and commercial entities.

Persons and other legal entities may be authorized access to classified information if it is required in the negotiation or performance of a DOD contract, or if release is in connection with (a) an advanced planning briefing, (b) the Scientific and Technical Information Program, or (c) a basic research grant or the Long-Range Planning Program. See the DOD Industrial Security Regulation, (DOD 5220.22R) for additional procedures.

§ 850.108 Access by persons outside the executive branch, historical researchers.

Access to Top Secret information by historical researchers outside the Executive Branch is not authorized. (See

§ 850.111) All requests by persons outside the Executive Branch of the United States Government for access to classified information in connection with historical research projects are forwarded through channels to the Director of Information, Office of the Secretary of the Air Force, Wash DC 20330, for action. SAFOI is responsible for the administration of this program as follows:

(a) Request investigation of individuals for whom access is being considered, as prescribed in AFR 205–32.

(b) Determine trustworthiness of individuals for whom access is being considered in accordance with the standards and criteria outlined in AFR 205–32.

(c) Authorize or deny access requested based on above determinations.

(d) Prescribe locations, schedules, and circumstances in which research may be

(e) Prohibit removal of any classified conducted.
material, including classified notes and manuscripts, from the US Government facility designated for the conduct or research.

(f) Establish specific arrangements for Air Force review of research notes and manuscripts.

(g) Forward manuscripts for review by Directorate for Security Review, Assistant Secretary of Defense (Public Affairs), if deemed necessary.

(h) Assure that classified information is not published in final historical research manuscripts or otherwise subjected to compromise.

§ 850.109 Access by persons outside the executive branch, former presidential appointees.

Access may be authorized by the Chief of Staff, HQ USAF, or higher authority.

§ 850.110 Access by persons outside the executive branch, foreign nationals, foreign governments, and international organizations, authority for disclosure.

The Assistant Chief of Staff, Intelligence, HQ USAF/INF, is responsible for developing, formulating, interpreting, and promulgating Air Force policy and procedures on disclosure matters consistent with the National Disclosure Policy. Pertinent instructions are contained in AFR 200–9, Disclosure of Classified Military Information to Foreign Government and International Organizations, which implements DODD 5230.11. No Air Force entity or person (military, civilian, or Air Force contractor) may disclose classified information to a foreign government, to an international organization, or to authorized representatives thereof, unless specific authority to do so has been obtained from HQ USAF/CVAFI.

(a) When disclosure of classified information is authorized, the method of transmission is prescribed by this part and AFR 200–9 and the DOD Industrial Security Regulation (DOD 5220.22R).

(b) A signed AF Form 349, Receipt for Documents Released to Accredited Representatives of Foreign Nations, which incorporates the conditions of disclosure, is obtained from an authorized representative of the foreign government or international organization for all documents which are disclosed and which contain classified information.

(c) The disclosure of classified information to foreign nations or foreign organizations acting in a private (nongovernmental) capacity is not authorized.

(d) Requests from or proposals to disclose classified information to such individuals or organizations are sent through normal command channels to HQ USAF/CVAFI, Wash DC 20330, for action or disposition.

(e) When appropriate, HQ USAF/CVAFI initiates action so that the prospective recipient if officially sponsored by his government.

§ 850.111 Conditions governing access to official records for historical purposes.

1. I will abide by the regulations for safeguarding clasified information issued sued by the Federal agency to which this application is being made or regulations which otherwise have been made applicable to the conduct of my historical research by the aforesaid Federal agency.

2. I understand that any classified information which I receive affects the national defense of the United States.

3. I acknowledge my obligation to safeguard classified information to which I gain possession or knowledge as a result of my access to files of any Federal agency.

4. I agree not to reveal to any person or agency any classified information obtained as a result of this access except as specifically authorized in writing by the Federal agency which approved my access, and I further agree that I shall not use the information for purposes other than that set forth in my application.

5. I agree to submit my research notes for security review prior to their removal from the specific area assigned me for research. I further agree to submit my manuscript, if required, for security review prior to its publication or presentation. In each of these reviews, I agree to abide by the decisions to safeguard official information in the interests of the defense of the United States, including the retention or deletion of any parts of such notes and manuscript whenever any Federal agency concerned deems such retention or deletion necessary.

6. I understand that failure to abide by conditions in this statement will constitute sufficient cause for canceling my access to classified information and for denying me any future access, and may subject me to criminal provisions of Federal Law as referred to in 7 below.

7. I am aware that the provisions of Title 18, U.S. Code, "Crimes and Criminal Procedures" and of the "Internal Security Act of 1950", as amended (Title 50, U.S. Code), prescribe, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national defense and for loss, destruction or compromise of such information.

This statement is made to the United States Government to enable it to exercise its responsibility for the protection of information affecting the national defense. I understand that any material

false statement which I make knowingly and willfully will subject me to the penalties of Title 18 U.S. Code Section 1001. (To be signed, dated, and witnessed)

§ 850.112 International traffic in arms.

(a) Regulations governing international traffic in arms are administered by the Department of State. However, the release of Air Force, Army, or Navy classified materiel for foreign sale or manufacture is not permitted without appropriate interdepartmental coordination.

(b) Requests for export licenses involving technical information related thereto and designated as arms, ammunition, or implements of war on the US Munitions List, which are received in the Air Force for review, are referred to HQ USAF/LGF, Wash DC 20330, for processing (See AFR 400–43, Munitions Control Procedures for US Munitions List Export License Applications for requests referred to the Department of Defense by the Department of State). HQ USAF/LGF also reviews proposals to release equipment and technical data under the military assistance programs referred to in AFR 400–2, Implementation, Execution, and Administration of the Military Assistance Programs, and AFR 400–10, Procedures in Support of the DOD Strategic Trade Control Program.

§ 850.113 Access by persons outside the executive branch, for litigation purposes.

Requests or subpoenas for the appearance of witnesses before civil tribunals or for classified information to be used in connection with litigation are governed by Part 840.

§ 850.114 Emergency situations.

The authority contained in this paragraph is not exercised when time or circumstances permit the routine clearance of persons to whom access is to be granted. However, in a compelling emergency, access may be granted on the basis of judgment of the recipient's known reputation and ability to perform the services for which granted, and judgment of the releasing official that granting access will be in the interest of promoting the national security and will result in net advantages to the government. The authority to approve access to Top Secret material under this paragraph is vested in The Chief of Security Police, HQ USAF, or higher authority. Telephonic or message requests are routed to HQ USAF/SPIB. The authority to approve access to Secret and Confidential material originated in the Air Force is delegated to the officials listed in Annex A of the DOD ISPR as Top Secret Original Classification Authorities. Release authorities secure concurrence of the Air Force office of origin before release in each instance.

§ 850.115 Access by visitors (other than foreign nationals) to Air Force installations and activities.

This paragraph applies to the approval and control of visits to Air Force installations and activities when access (by the visitor) to classified information is or might be involved. It does not apply to: (1) Those on duty or employed at the installation, or students detailed to attend a course of study or training at an installation; (2) Those ordered by higher authority to perform duty at the installation or activity; or (3) Those who are visiting at the request, invitation, or direction of the installation or activity commander concerned.

(a) In any visit involving access to classified information, all requirements of this chapter must be fulfilled before the information is disseminated. If a visitor is to be given physical custody of classified material, all accountability and tranmission requirements of this part must be fulfilled.

(1) Responsibility. The commander is the local representative of the Department of the Air Force regarding the admission of visitors to his installation. If conditions make the admission of a visitor inadvisable, the commander postpones the visit and promptly verifies the validity of the requested visit.

(2) Restrictions On Movement Of Visitors. To protect classified information, the commander must restrict the movement of visitors entering his installation.

(b) Requests for permission to visit an installation or activity should be referred to the commander (or his designee) for approval or disapproval. All such requests must be submitted in writing, as follows:

(1) Visits By DOD Contractor Personnel. Requests for visit approval are prepared by DOD contractors and their personnel in accordance with the DOD Industrial Security Manual (DOD 5220.-22M) and processed in the Air Force according to the DOD Industrial Security Regulation (DOD 5220.22R) as supplemented by AFR 205–4.

(2) Visits By Other Personnel. Request for the approval of a visit involving access to classified information must be submitted early enough to allow time for consideration, decision, and reply by the approving authority. Requests include the following information, as applicable:

(a) Name in full, grade, title, position.

(b) Nationality of visitor.

(c) Current residence or military assignment.

(d) Employer or sponsor.

(e) Name and location of installation or activity to be visited.

(f) Date, time, and duration of visit.

(g) Purpose of visit, in detail.

(h) Level of access authorized, and authority for access to Critical Nuclear Weapon Design Information (CNWDI) or other special access program, if such access is required.

§ 850.116 Access by immigrant alien personnel.

Air Force military personnel and civilian employees who are immigrant aliens may be granted security clearances only to the Secret level. Access to Secret CRYPTO and to information defined in AFR 205–19, Controlling the Dissemination and Use of Intelligence and

Intelligence Information Produced by Members of the Intelligence Community, is prohibited.

§ 850.117 Policy, general.

Classified material in Air Force custody may be disseminated to persons or entities within the Executive Branch of Government whose official duties or functions require access in the interest of national security subject to limitations imposed by the originator and within the constraints by DOD ISPR, paras 7–100, 7–101, and 7–103. In all such cases, the following rules apply:

(a) Before approving a release of classified information, the releasing official must verify the identity of the recipient and determine that in his official capacity he has a valid, verifiable "need-to-know."

(1) The fact that an individual has a security clearance and a valid requirement for access to information concerning some aspects of a plan or project, does not mean that he needs or should be given access to all classified information related to that plan or project.

(2) Commanders, office chiefs, and other supervisory personnel should so organize their offices and functions as to limit the need for their subordinates to have access to broad areas of classified information.

(b) Do not release classified information for private use (personnel or commercial) or for use as background material. Any person who requests classified information for such use is considered a "private individual." His request will not be approved even though he may have been partly or solely responsible for production of the information. This rule applies to requests from military personnel on active duty or in retired status, members of the Reserve Forces, and civilian officials, as well as persons outside the Executive Branch. (See DOD ISPR, para 7–106f for exceptions.)

(c) Top Secret Information. Each commander, office chief, and other supervisor concerned, develops and implements special measures to limit severely the dissemination of Top Secret information. No dissemination or disclosure of Top Secret information is made or authorized by any person without determining beforehand that it is absolutely necessary for the recipient to know or possess the information. The number of persons who work on Top Secret material must be kept to an absolute minimum.

(d) Warning as to Classification. When classified information is discussed with other persons, they must be informed of its classification. The following additional rules also apply:

(1) When Restricted Data (or other information requiring specific control measures under law or regulation) is discussed, the recipient is informed of the applicable special requirements.

(2) When classified information is discussed with persons other than members of an agency of the Executive Branch, they are informed (warned) that (i) the information affects the national security of the United States within the meaning of the Espionage Laws, (ii) its transmission or revelation in any manner to an unauthorized person is prohibited by law, and (iii) it must be safeguarded according to its assigned classification under EO 11652.

(e) Individual Activities. Military and civilian personnel shall not include classified information in any personal or commercial article, presentation, thesis, book, or other product written for commercial publication or public distribution.

(f) Service Periodicals. Commanders are responsible for making sure that service magazines, journals, and newspapers published under this supervision or jurisdiction do not contain classified information.

§ 850.118 Disclosure authority.

(a) Controls and Limitations. Each commander, and each chief of a staff office, must establish detailed procedures concerning dissemination of classified information within the organization under his jurisdiction.

(b) To Air Force, DOD, and Interpartmental Activities. The commander or chief of the originating headquarters or unit or his designee, or higher authority in the same chain of command, may disseminate or approve the dissemination of classified information and material to: (i) subordinate echelons of his own command or organization, (ii) personnel under his jurisdiction, (iii) other offices or activities of the Air Force, (iv) other personnel, activities, and agencies of DOD, and (v) officially constituted interdepartmental committees with Air Force membership.

(c) To Other US Government Personnel and Agencies. Unless otherwise provided in this part, the officials designated in (b) above also are authorized to make or to approve dissemination to other departments, agencies, branches, and personnel of the Executive Branch of the Government. Each such release is made through the normal channels of communication established between the Air Force and the department or agency concerned, and the release is reviewed for propriety and desirability at each intervening Air Force element.

(d) To Reserve Forces Personnel. Members of the Air Reserve (AFRES) and the Air National Guard (ANG) who are on extended active duty have access to classified information on the same basis as members of the Regular Air Force. Although Reserve components' personnel not on extended active duty generally will not need such access, it may be granted to those who have been determined to be trustworthy under the following conditions.

(1) Confidential and Secret. Confidential and Secret information may be disclosed only to persons who are participating in active or inactive duty training, and who must have it to perform their officially assigned duties.

(2) Top Secret. Normally, Top Secret information is not used in Reserve components' training programs, nor are AFRES or ANG personnel to be given access to such information. However, Top Secret information may be disclosed to an individual member of the AFRES or ANG if:

(a) He is on a short or special tour of active duty and it is essential for the performance of his officially assigned duties; or

(b) He has been specifically authorized by the major commander concerned to have such access in an inactive duty training status, and it is essential for the performance of his officially assigned duties as a member of a Training Category A unit or as an augmentee in an Air Force Wartime Augmentation Authorization position. This authority must not be redelegated.

§ 850.119 Intelligence material.

There are special restrictions on the dissemination of classified intelligence information to contractors or elsewhere outside the DOD. These restrictions, and the approving authorities for making such dissemination, are contained in Defense Intelligence Agency Instruction 50–4, a copy of which is available in HQ USAF/IN (AFIS/INSA) or in the intelligence office of each major command.

§ 850.120 Restricted data and formerly restricted data, dissemination of restricted data within DOD.

Restricted Data is disseminated within DOD on the same basis as other classified information; that is, the recipient must have need-to-know, and must have been granted a DOD security clearance of appropriate level. (However, see § 850.124 for limitations applying to Critical Nuclear Weapon Design Information.)

§ 850.121 Restricted data and formerly restricted data, dissemination of restricted data between Air Force and National Aeronautics and Space Administration (NASA).

(a) Air Force personnel are authorized to receive Restricted Data from NASA, provided they have a need-to-know and have been granted appropriate access authorization in accordance with AFRs 205–4 or 205–32.

(b) Requests to NASA for Restricted Data are transmitted, orally or in writing, to the NASA custodian of the information, together with assurance that the above requirements are fulfilled. Such requests need not be made or approved by a "certifying official," as defined in § 850.122(c) below.

(c) Air Force personnel are authorized to disseminate Restricted Data pertaining to aeronautical and space activities to NASA personnel provided:

(1) The recipient has been identified;

(2) It has been ascertained that the recipient has been granted an appropriate NASA clearance, or in the case of NASA contractors, an appropriate NASA or DOD clearance; and

(3) Assurance is obtained, either orally or in writing, that the recipient has need-to-know for performance of his official duties.

(d) Restricted Data that does not pertain to aeronautical or space activities

is disseminated to NASA personnel only in accordance with para 7–204c1 below.

§ 850.122 Restricted data and formerly restricted data, dissemination of restricted data between Air Force and ERDA or Federal agency other than NASA.

(a) Dissemination. Air Force personnel are authorized to disseminate Restricted Data to Energy Research and Development Administration (ERDA), and the Nuclear Regulatory Commission (NRC) personnel or to ERDA/NRC cleared personnel of Federal agencies other than NASA, provided the recipient is identified and it is ascertained that he has ERDA/NRC granted clearance of appropriate level. ERDA/NRC clearances equate with DOD clearances as follows:

DOD	*ERDA or NRC*
Confidential	L.
Secret	Q.
Top Secret	Q. Specifically annotated to show TS authorization.

(b) Receipt. Air Force personnel are authorized to receive Restricted Data from ERDA or Federal agencies other than NASA provided the recipient has need-to-know and appropriate access authorization per AFR 205–32, and provided further that the foregoing is certified by an official designated specifically for this purpose per para (c) below.

(c) Certifying Officials. Pursuant to an agreement between DOD and ERDA, certain officials are designated, by position titles, to certify that employees under their jurisdiction have the appropriate security clearance for and the need-to-know Restricted Data in possession of ERDA or Federal agencies other than NASA. The Secretary of the Air Force has designated the officials listed in § 850.128 to perform these functions.

(1) Air Force certifying officials may authorize subordinate commanders or other officials under their jurisdiction to exercise their certifying authority; certifications in such cases, however, must identify (by position title) the certifying official for whom the designee is acting and must be signed "for" the certifying official.

(2) Requests for additional designations as certifying official, and prompt notification of desired deletions or organizational changes affecting the list, are directed to HQ USAF/SPIB for referral to the Secretary of the Air Force.

(d) Requesting Visit or Access Approval. Requests for approval of access to Restricted Data in possession of ERDA or Federal agency other than NASA, including approval of visits that would involve such access are processed as follows:

(1) General—Initiating Requests. For Air Force personnel, AEC Form 277, Request for Visit or Access Approval, is initiated by the activity or official desiring the information or visit. It is forwarded to the appropriate Air Force certifying official or his designee, and sent to the ERDA activity authorized to approve the request (see (2) through (6) below).

(a) When practicable, the request is initiated in time to reach the approving ERDA official at least 10 calendar days before the proposed date on which the visit or access is planned.

(b) In an emergency, or when required by military exigencies, a request may be sent to the certifying official by electrically transmitted message, and that official may make an oral request for approval by the ERDA authority. (However, such a request must be followed by the formal written request prescribed above.)

(c) Instructions on the preparation of AEC Form 277 are given in § 850.127. Forward the form to the Air Force certifying official in five copies, and to the ERDA approving official in four copies.

(2) Weapons Programs and AEC Weapons Laboratories. For access, or a visit involving access, to Restricted Data pertaining to nuclear weapons programs, send requests directly from the certifying official to the Manager of the ERDA Albuquerque Operations Office or the ERDA San Francisco Operations Office, as appropriate.

(a) The initiation of such request is limited to Air Force activities which are performing work, pursuant to a formal written agreement with, or for, ERDA agencies under the jurisdiction of these ERDA operations offices, or specifically authorized to make direct requests to the ERDA operations offices for particular subjects of mutual interest within the weapons program.

(b) When visits are planned for a meeting or discussion with personnel at an ERDA weapons laboratory or other activity, the time, subject matter, and other details of the meeting or discussion should be coordinated with appropriate personnel before AEC Form 277 is initiated. If recurring visits have been authorized according to (7) below, similar arrangements should be made before each visit.

(3) Army Reactor Program. Send Requests for access, or a visit involving access, to Restricted Data pertaining to the Army Nuclear Power Reactors directly from the certifying official to the Director, US Army Engineer Reactors Group, Fort Belvoir, Virginia.

(4) Naval Reactors Program. For access, or a visit involving access, to Restricted Data pertaining to the Naval Reactors Program, send requests directly from the certifying official to the Director, Division of Naval Reactors, ERDA, Washington, DC.

(5) Other ERDA Programs and Information. Requests for access, or for approval of a visit involving access, to Restricted Data pertaining to subjects or programs other than those described in (2) through (4) above, or for access to Restricted Data for which a direct access arrangement has not specifically been authorized by ERDA, are sent directly from the certifying official to the ERDA Washington Division having primary responsibility for the subject matter involved.

(6) Federal Agencies Other Than ERDA or NASA. Request for access, or for approval of a visit which would involve access, to Restricted Data in the custody of a Federal department or agency other than ERDA or NASA are sent by the certifying official through normal communications channels to the department or agency concerned.

(7) Recurring Visits. To obtain ERDA approval for recurring visits to specified ERDA facilities without obtaining separate approval for each visit, specify inclusive dates during which the access will be required. Requests may be made for periods of up to 12 months, or longer if local ERDA regulations permit. When the individual for whom recurring access is authorized is reassigned or is no longer required to have such access, the commander shall forward a request to ERDA to terminate the arrangement.

(8) Visits by Air Force Contractors. Visits by Air Force contractors or their employees that would involve access to Restricted Data in the custody or under the jurisdiction of ERDA or its contractors, are processed in accordance with AFR 205–4 and this subpart. In this case, the administrative contracting officer (ACO) responsible for administering the contract under which access is required, also is responsible for:

(a) Furnishing the Air Force contractor with the necessary Forms (AEC Form 277) and with the instructions on their preparation;

(b) Determining whether the fulfillment of the contract requires access to Restricted Data as proposed; and

(c) Forwarding the request form to the appropriate Air Force certifying official, together with justifying information, for signature and submission to the ERDA approving authority.

§ 850.123 Restricted data and formerly restricted data, foreign disclosure.

Formerly Restricted Data to any foreign nation or international pact organization, or to a representative thereof, is prohibited except in accordance with agreements for cooperation entered into pursuant to section 123, Atomic Energy Act of 1954, as amended.

§ 850.124 Restricted data and formerly restricted data, additional controls over critical nuclear weapon design information.

(a) Only those individuals specifically authorized by a certifying official listed in § 850.128 are granted access to Critical Nuclear Weapon Design Information. Exercise of certification authority for this purpose may be in accordance with para (c) above.

(b) Certifying officials shall certify only individuals who have a need-to-know, evaluated in the strictest sense, and a final security clearance of appropriate level granted in accordance with AFRs 205–4 or 205–32. US citizenship is required except as provided in para (g) below.

(c) On being certified for access to Critical Nuclear Weapon Design Information an individual shall be briefed as to its importance and the procedural requirements for its control.

HQ USAF, a branch chief or higher official may authorize the reproduction of

(d) Within their respective activities, certifying officials assure establishment and maintenance of procedures that meet the requirements pertaining to the control of access to Critical Nuclear Weapon Design Information specified in this part.

(e) In cases where visitors require access to Critical Nuclear Weapon Design Information in the possession of the Air Force, verification that access to such information is authorized is obtained from or furnished by the individual's parent organization.

(f) Under combat conditions, during or after a nuclear accident, or in other military exigencies, the commander of a numbered Air Force or a comparable or higher level organization may waive the requirements of this regulation pertaining to access to Critical Nuclear Weapon Design Information as warranted by circumstances.

(g) Immigrant aliens can be certified for access to Critical Nuclear Weapon Design Information only upon determination by the Secretary of Defense or his designee, based on recommendation of the Secretary of the Air Force, that granting such access would be in the best overall interests of the U.S. In such a case the immigrant alien must have a very unusual talent or skill that is essential to meet U.S. requirements and is not possessed to a comparable degree by an available U.S. citizen. Requests for approval for such access, with justifying information, are submitted by the responsible certifying official to HQ USAF/SPIB for referral to Secretary of the Air Force.

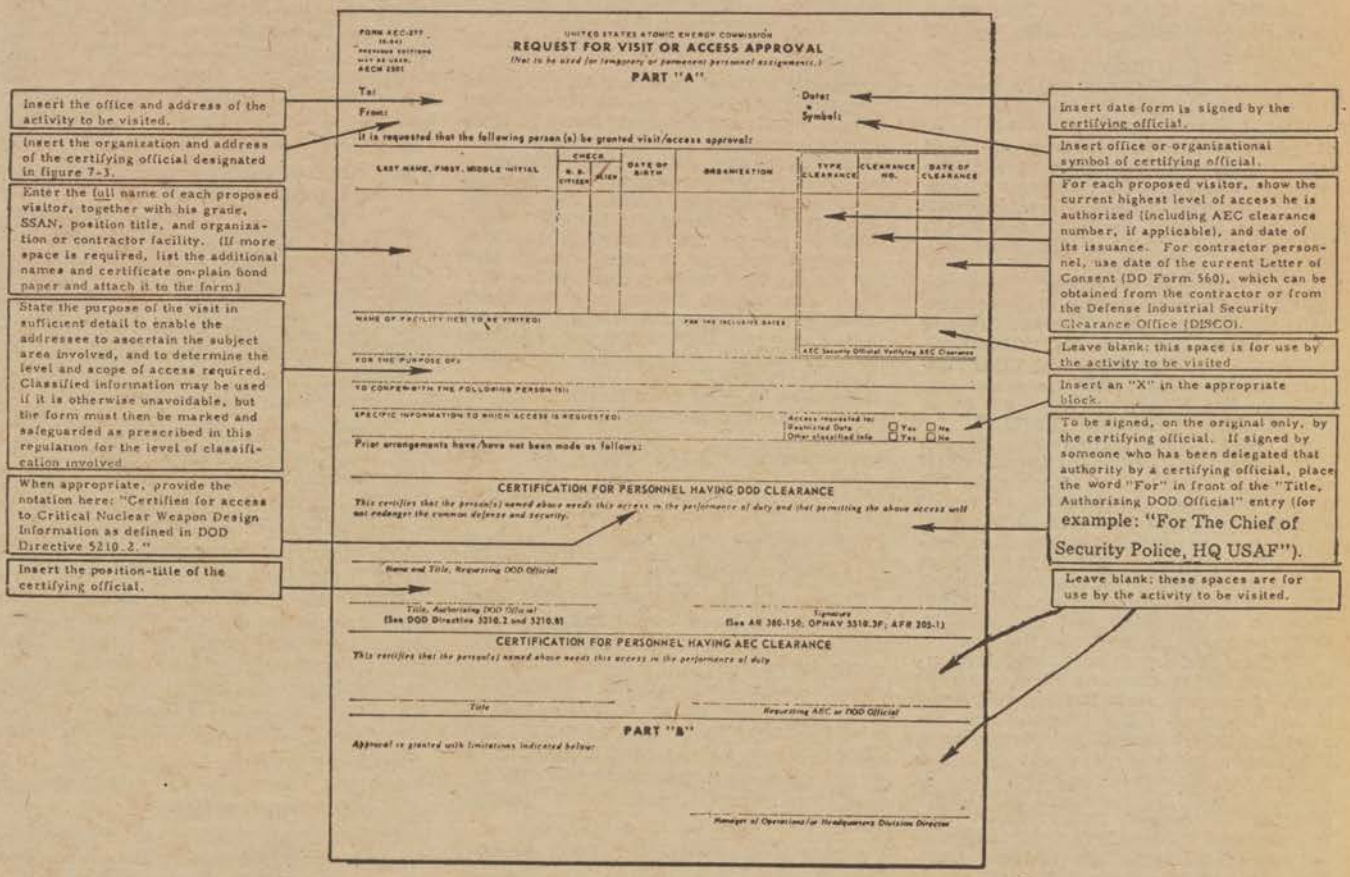
§ 850.125 Restraint on reproduction, designating officials.

Air Force commanders designate in writing the officers within their units or headquarters who may exercise authority for reproducing classified material. In material on which reproduction limitations have not been established. Top Secret and Secret documents that were originated by the ERDA may not be reproduced without the permission of the originator; such permission may be obtained in writing or orally.

§ 850.126 Restraint on reproduction, designated equipment.

Rules for use of equipment on which classified material is to be reproduced are approved by the officials designated in § 850.125. The equipment must be located in areas under the constant surveillance of personnel charged with enforcing the rules against unauthorized use or otherwise protected by appropriate safeguards approved by the authorizing official.

§ 850.127 Instruction for preparing a request for visit or access approval (AEC Form 277).



§ 850.128 Air Force officials authorized to certify personnel for access to restricted data, including critical nuclear weapon design information.

Secretary of the Air Force, HQ USAF
Under Secretary of the Air Force, HQ USAF
Assistant Secretary for Manpower and Reserve Affairs, HQ USAF
Assistant Secretary of the Air Force (Financial Management), HQ USAF
Assistant Secretary of the Air Force (Installations and Logistics), HQ USAF
Assistant Secretary of the Air Force (Research and Development), HQ USAF
Administrative Assistant to the Secretary of the Air Force, HQ USAF
Director of Space Systems, USAF
Chief of Staff, USAF
Vice Chief of Staff, USAF
Assistant Vice Chief of Staff, USAF
Director of Administration, HQ USAF
Assistant Chief of Staff, Intelligence, HQ USAF
Director of Policy and Resource Management, Assistant Chief of Staff, Intelligence, HQ USAF
Director of Threat Applications, Assistant Chief of Staff, Intelligence, HQ USAF
Assistant Chief of Staff, Studies and Analysis, HQ USAF
Military Director, USAF Scientific Advisory Board, HQ USAF
The Surgeon General, HQ USAF
The Inspector General, HQ USAF; Deputy, The Inspector General, HQ USAF
The Chief of Security Police, HQ USAF
Deputy Inspector General for Inspection and Safety; Director of Aerospace Safety, The Inspector General, USAF; Director of Nuclear Safety, The Inspector General, USAF
Deputy Chief of Staff, Personnel, HQ USAF; Assistant Deputy Chief of Staff, Personnel, HQ USAF
Deputy Chief of Staff, Plans and Operations, HQ USAF; Assistant Deputy Chief of Staff, Plans and Operations, HQ USAF; Director of Doctrine, Concepts and Objectives, DCS/Plans and Operations, HQ USAF; Director of Operations, DCS/Plans and Operations, HQ USAF; Director of Plans, DCS/Plans and Operations, HQ USAF
Deputy Chief of Staff, Programs, and Resources, HQ USAF; Assistant Deputy Chief of Staff, Programs and Resources, HQ USAF; Director of Aerospace Programs, DCS/Programs and Resources, HQ USAF; Director of Civil Engineering, DCS/Programs and Resources, HQ USAF; Director of Command Control and Communications, DCS/Programs and Resources, HQ USAF; Director of Manpower and Organization, DCS/Programs and Resources, HQ USAF
Deputy Chief of Staff, Research and Development, HQ USAF; Assistant Deputy Chief of Staff, Research and Development, HQ USAF; Director of Development and Acquisition, DCS/Research and Development, HQ USAF; Director of Operational Requirements and Development Plans, DCS/Research and Development, HQ USAF; Director of Space, DCS/Research and Development, HQ USAF; Director of Reconnaissance and Electronic Warfare, DCS/Research and Development, HQ USAF
Deputy Chief of Staff, Systems and Logistics, HQ USAF; Assistant Deputy Chief of Staff, Systems and Logistics, HQ USAF; Director of Maintenance, Engineering and Supply, DCS/Systems and Logistics, HQ USAF; Director of Military Assistance and Sales, DCS/Systems and Logistics, HQ USAF; Director of Procurement Policy, DCS/Systems and Logistics, HQ USAF; Director of Logistics Plans and Programs, DCS/Systems and Logistics, HQ USAF; Director of Transportation, DCS/Systems and Logistics, HQ USAF
Comptroller of the Air Force, HQ USAF; Deputy Assistant, Comptroller for Accounting and Finance, HQ USAF; Director of Budget, Comptroller of the Air Force, HQ USAF; Director of Data Automation, Comptroller of the Air Force, HQ USAF
Commander, Aerospace Defense Command
Commander, Air Training Command
Commander, Air University; Deputy Chief of Staff for Education, Air University; Commandant, Air Force Institute of Technology
Commander, Alaskan Air Command
Commander, Air Force Communications Service
Commander in Chief, US Air Forces in Europe
Commander, Headquarters Command, USAF
Commander, Air Force Logistics Command; Commander, 2750 Air Base Wing (AFLC); Commander, Ogden Air Logistics Center; Commander, Oklahoma City Air Logistics Center; Commander, Sacramento Air Logistics Center; Commander, San Antonio Air Logistics Center; Commander, Warner Robins Air Logistics Center; Commander, Aerospace Guidance and Meteorology Center
Commander, Military Airlift Command; Commander, Aerospace Audio Visual Service
Commander in Chief, Pacific Air Forces
Commander, USAF Security Service
Commander, United States Air Forces Southern Command
Commander in Chief, Strategic Air Command
Commander, Air Force Systems Command; Commander, Aeronautical Systems Division; Commander, Aerospace Medical Division; Commander, Armament Development and Test Center; Commander, Arnold Engineering Development Center; Commander, AF Contract Management Division; Commander, Eastern Test Range; Commander, Electronic Systems Division; Commander, AF Flight Test Center; Commander, Foreign Technology Division; Commander, Rome Air Development Center; Commander, Space and Missile Systems Organization (SAMSO); Commander, AF Special Weapons Center
Commander, Tactical Air Command
Director, Air Force Technical Applications Center
Superintendent, United States Air Force Academy
Commander, Air Force Test and Evaluation Center

§ 850.129 Restraint on reproduction, clearing machines.

Rules will include assurance that copying machines have been cleared of classified information after classified documents have been reproduced. Belts, impression cylinders, rollers, rubber blankets, and other parts of press copying machines that carry images during production must be thoroughly cleaned by scrubbing with appropriate solvents immediately after use on classified production.

§ 850.130 Reproduction of top secret.

When the originator of a Top Secret document produces additional copies of a document after initial production, copy numbers for the reproduced material begin with the next consecutive number following the last copy number produced by the originator. When Top Secret material is reproduced by an office other than the originator, the reproduced material is marked to show the reproducing office, the number of copies reproduced and the authority for reproduction. "Reproduced (date) by (office symbol) by authority of (authorizing agency). Reproduced copy ____ of ____ copies." When the authority for reproduction is contained in the document, the office or origin is cited as the "authorizing agency" without further query. Reproduction of Top Secret messages as necessary to make required distribution is authorized without specific approval of the originator.

§ 850.131 Serial numbering of secret and confidential.

Serial numbering of Secret and Confidential documents is discouraged; however, when used, the system for the identification of reissues and reproductions prescribed above for Top Secret documents applies.

§ 850.132 Scientific and technical meetings, security measures for meetings.

Subparagraphs a through e outline Air Force policy and implement DOD Directive 5200.12, for approving or sponsoring meetings where the disclosure of classified security information is involved. They provide guidance to Air Force activities in determining whether to approve, sponsor, or co-sponsor proposed meetings; and establish security measures for the conduct of and attendance at meetings held for this purpose.

§ 850.133 Scientific and technical meetings, terms explained.

(a) Meetings. Meetings at which classified information is disclosed, including conferences, seminars, symposia, exhibits, scientific and technical conventions and gatherings conducted by the Air Force and other DOD components, or by associations, societies, institutions, groups, Defense contractors, and other non-Defense activities.

(b) Communist-Controlled Countries. Communist countries are Albania, Bulgaria, Chinese Peoples Republic (Communist China) (including Tibet), Cuba, Czechoslovakia, Democratic Peoples Republic of Korea (North Korea), Democratic Republic of Vietnam (North Vietnam), German Democratic Republic (GDR) (East Germany, including the Soviet Sector of Berlin), Hungary, Mongolian Peoples Republic (Outer Mongolia), Poland, Rumania, Union of Soviet Socialist Republics (USSR) (including Estonia, Latvia, Lithuania, and all the other constituent republics), and Yugoslavia.

§ 850.134 Scientific and technical meetings, general policy.

(a) National Interest. Air Force commanders or other officials do not approve or sponsor any venture which is not in the best interest of national security.

(b) Advance Action. Air Force commanders or other officials do not approve or sponsor any meeting involving disclosure of classified information if adequate security measures have not been provided for in advance.

(c) Contractors. Air Force security responsibilities for sponsoring classified meetings, held by DOD contractors, in accordance with DOD Industrial Secu-

rity Regulation must conform with this part.

(d) Attendance. Attendance at meetings conducted or sponsored by Air Force commanders or other officials is limited to those persons whose presence is considered necessary and who:

(1) Have been granted an access authorization equal to or higher than that of the information to be discussed; and;

(2) Have official duties requiring such access in the interest of promoting national security. A person's attendance at a meeting does not necessarily mean that he is or should be authorized access to all classified sessions or presentations. Each person should be scheduled and permitted to attend only those classified portions which involve the subject matter he requires in order to perform his official duties.

(e) Location of Meetings:

(1) Meetings at which Top Secret information is to be disclosed are held only at US Government installations or at cleared facilities of DOD contractors. However, when necessary for the effective accomplishment of essential functions, Air Force commanders and other officials may hold such meetings at another location provided they have been authorized to do so, in writing, by an Assistant Secretary of the Air Force. Send requests for authorizations through channels to the major staff office in HQ USAF with primary responsibility for the subject matter of the meeting. When an exception appears warranted, that office coordinates the matter with HQ USAF/SP before forwarding the proposal for secretarial approval. (As a matter of policy, such requests are disapproved unless there is overwhelming evidence that the need and exception clearly justifies risking possible loss of security.)

(2) Meetings at which information no higher than Confidential is to be disclosed or discussed may be held at other locations provided an adequate US Government installation or cleared DOD contractor facility is not available and it is specifically approved and authorized in writing at numbered Air Force level or higher.

(f) Attendance by Foreign Nationals:

(1) Foreign nationals of countries other than Communist countries may be approved for attendance at an Air Force sponsored meeting, in which classified information is to be disclosed, provided it is specifically authorized in writing by HQ USAF/CVAFI.

(2) Representatives of Communist countries are excluded from meetings with no unclassified sessions.

(3) Representatives of Communist countries are not authorized to attend unclassified sessions or unclassified portions of meetings comprising a mixture of classified and unclassified sessions, unless specifically and individually approved in writing on a name basis by the Secretary to the Air Force. Send requests for such action to HQ USAF/CVAFI.

(4) When the entire meeting is unclassified, prior approval by HQ USAF/CVAFI must be obtained to invite representatives of Communist countries to attend wholly unclassified meetings sponsored or conducted by Air Force commanders or other authorized officials.

§ 850.135 Scientific and technical meetings, guides for sponsorship.

(a) Acceptance of Sponsorship. Sponsorship of meetings is accepted only if the Department of the Air Force has a significant interest in the subject matter of the meeting, and only after a determination is made that:

(1) The use of conventional channels for dissemination of scientific, technical, and other information would not accomplish the purpose of the meeting.

(2) The conduct of the meeting is clearly consistent with the interests of national security.

(3) Adequate security measures have been developed and will be carried out.

(4) All persons selected and approved to attend the classified portions of these meetings have met the general policy for attendance prescribed above.

(b) Announcements and Invitations. Acceptance of sponsorship entails the review of all announcements and invitations for accuracy and to insure that:

(1) They are unclassified.

(2) All announcements and invitations indicate that the meeting has appropriate Air Force sponsorship to include identification of the sponsoring activity.

(3) Announcements of and invitations to unclassified sessions of meetings do not contain notices of classified sessions.

(4) Notices of classified sessions are not sent to Communist country personnel.

§ 850.136 Scientific and technical meetings, security responsibilities.

In addition to the security responsibilities inherent in the general policy statements above, the commander or other official conducting or sponsoring a meeting is charged with full security responsibility, including the following specific functions:

(a) Determining that the area selected for presentation of classified information is secure against unauthorized access to or illicit acquisition of the classified information involved.

(b) Insuring that adequate secure storage facilities are available, when required.

(c) Insuring that attendance at meetings at which classified information is discussed is limited to those persons whose names appear on the approved access list and then only on proper identification.

(d) Controlling and safeguarding any classified material furnished attendees and regaining custody of all classified material or obtaining receipts, as appropriate, at the end of each classified session of the meeting.

(e) Providing HQ USAF/CVAFI with the names, before issuance of actual invitation, of all representatives and nationals of Communist countries whom it is planned to invite to a meeting (including unclassified meeting). In addition to the names, providing the date of attendance, location of the meeting, subject matter to be discussed, and the titles and preliminary of final abstracts of scientific, technical, or other papers to be presented.

(f) Notifying each person who presents or discloses information at a meeting of any limitations that must be imposed for reasons of security, level of access authorization, requirement for access to the information, and planned attendance of foreign nations. The speaker is responsible for seeking such guidance and for keeping his disclosures within prescribed limits.

(g) Providing such other safeguards as may be deemed appropriate.

§ 850.137 Top Secret, control officers.

The security aspect of Top Secret information is paramount and takes precedence over operational considerations and administrative convenience. A Top Secret control system must be established, and particularly severe rules and procedures must be enforced for controlling and safeguarding such material.

(a) Organizational Concept. The Top Secret Control system may be organized in one of the following three ways:

(1) Method A. A single office may be designated to serve as the Top Secret control office for the entire headquarters, base, or unit. The TSCO receives, records, controls and dispatches all Top Secret material for all organizations and offices served by the account. His records must reflect the location of or disposition of each Top Secret document originated, received, possessed, and dispatched by all organizations and offices served by the account.

(2) Method B. A single office may be designated to serve as the primary Top Secret control office for a headquarters, base, or unit with one or more subordinate Top Secret control offices designated to serve specified elements of the headquarters, base, or unit.

(a) Each account serves designated units or activities and is maintained as a separate account; however, all Top Secret material received from or dispatched to units or activities outside the headquarters, base, or unit which the Top Secret control system was established to serve, is routed through the primary Top Secret account.

(b) Internal transactions between subordinate accounts are authorized. Such transactions need not be routed through the primary Top Secret account.

(c) Although the TSCO of the primary account should coordinate and monitor activities of the entire control system, each TSCO is responsible to this appointing authority for the proper operation and maintenance of his account.

(3) Method C. Two or more primary Top Secret control offices (with subordinate control offices as described in (2) above, when needed) to act as independent Top Secret control offices for specified elements of the headquarters, base, or unit, may be designated.

(a) When this method is used, one of the primary TSCOs is designated HQ TSCO. In addition to his operations as a primary TSCO, he takes possession of incoming Top Secret material which is improperly or inadequately addressed and makes a permanent transfer of the material to the proper primary TSCO.

(b) Within the organization, the HQ TSCO also monitors and coordinates the activities of the other primary TSCOs, though each is responsible to the appointing authority for proper operation and maintenance of his account.

(4) Top Secret Control by Telecommunications Centers. Top Secret Control Officers are appointed in each telecommunications center that receives, processes or dispatches Top Secret messages. These accounts are operated in accordance with all provisions of the DOD ISPR and this part with the following exceptions:

(a) AF Form 143 need not be prepared for copies of message traffic which are maintained on a transitory basis for 30 days. AF Forms 1014, Message Delivery Register, and 1022, Communications Center Message Register, or other authorized records of accountability may be used to record the receipt and disposition of messages.

(b) Audit/Inventories are not required when account neither receives for action nor maintains, Top Secret documents other than message traffic destined for other addresses. These accounts are examined during regularly scheduled semiannual security and inspector general inspections.

(c) The TSCO is given the authority to function as a primary TSCO for the purpose of dispatching Top Secret messages from the installation.

(b) Selection of Control System. The organizational pattern selected for use should be determined on the basis of requirements of the units or functions to be served. A schematic diagram of the optional organizational concepts for Top Secret Control Systems is reflected in § 850.139. The most suitable pattern varies with the volume of Top Secret material involved, the operational needs of the unit, and the administrative system most effective for the scope of operation of the unit. However, whatever organizational pattern is adopted, the control and safeguarding of Top Secret information requires conscientious attention to duty by well-informed persons, close supervision, and careful inspection under both the command inspection system and the designated primary control officer under § 850.141 referred to as the HQ TSCO. The chief of an office or commander to be served by the Top Secret control system determines the organizational method of the control system to be used and appoints in writing the primary TSCO, subordinate TSCOs (if needed), and one or more deputy TSCOs for each Top Secret control account established.

(c) Selection and Appointment of Top Secret Control Officers (TSCO). Select experienced, qualified personnel who have been granted an access authorization to Top Secret material based on a final personnel security clearance. Select only officer, noncommissioned officers, or civilian employees with demonstrated judgment and maturity to perform Top Secret Control functions. When practical, assign TSCO functions as an additional duty.

(d) TSCO Function. A TSCO is responsible for function and duties described below, plus others his commander or superiors may find it necessary to assign.

(1) Functions of the Primary TSCO. A Primary TSCO:

(a) Maintains a Top Secret register.

(b) Receives, signs for, and dispatches all Top Secret material transmitted to or from the organizational elements he serves; and maintains receipt for the Top Secret material he dispatches or transfers.

(c) Insures that persons who have custody of Top Secret material for which he is accountable are properly relieved of accountability before they depart on leave of absence or temporary duty of more than 45 days, or when they are transferred, reassigned, separated, retired, or otherwise change status with regard to the custody or possession of Top Secret material.

(d) Maintains a roster of TSCOs, Deputies, and Agents to whom he regularly transfers documents in person, and of those personnel in activities he serves directly who are responsible for documents for which he is accountable.

(e) Conducts periodic checks within the activities he serves directly to assure the proper handling and safeguarding of Top Secret information.

(f) Coordinates and monitors the operation of any subordinate control offices.

(2) Functions of the Subordinate TSCO. A Subordinate Top Secret Control Officer performs the functions listed above for elements he serves. However, the functions of a subordinate control office are limited to transactions within the primary account under which established. Transactions between subordinate accounts (under the same primary Top Secret account) are authorized. Such transactions need not be routed through the primary Top Secret account. When Top Secret material is transferred from the primary account to a subordinate account, or, from a subordinate account to the primary account, or, from one subordinate account to another subordinate account under the same primary account, the TSCO transferring the material drops accountability for it when the receipt is received and the TSCO receiving the material becomes accountable on receipting for it.

(3) Functions of TSCO Agents. A commander may authorize specially selected and individually designated airmen and civil service personnel to perform certain functions on behalf of the TSCO. However, he must first determine that the volume of Top Secret material being transmitted is great enough to affect adversely the performance of assigned functions without the use of agents. The designation of TSCO Agents does not relieve the TSCO of any of his responsibility for the control and protection of Top Secret material. TSCO Agents may be authorized to perform one or more of the following functions:

(a) Sign courier receipts and transfer of custody receipts for Top Secret material.

(b) Courier Top Secret material transmitted within and between Department of Defense elements located within the same Air Force, Army, or Navy installation or within the same building if the elements are not located on such an installation.

(c) Certify material being entered into the Armed Forces Courier System, and sign ARFCOS Form 1, Armed Forces Courier Receipt to Sender, on behalf of the TSCO.

(4) Designation and Instruction. The designation of a person to act as an agent of a TSCO must be written and includes: the identity of the designated agent; the particular circumstances in which he may act for the TSCO; and detailed instruction for performance of the functions which he may perform for the TSCO.

§ 850.138 Top Secret, accountability, AF Form 143, Top Secret Register.

(a) Purpose and Explanation. The purpose of the Top Secret Register is to provide a record which shows each Top Secret document (and copy), and each article of Top Secret material received, originated, and/or dispatched by elements the TSCO serves; and the location/disposition of each such item. AF Form 143, Top Secret Register, is used for this purpose. The use of locally devised forms is prohibited unless an exception is specifically approved in writing by the major command concerned or, in HQ USAF 1143ABS/SP. Exceptions are authorized only when modification of the form is necessary to permit the use of mechanized accounting systems or other specialized or limited applications.

(b) Maintenance. Maintain AF Form 143 on a calendar year basis in a manner which permits easy determination of its completeness. Normally, the register should be maintained in a single file for each calendar year. In large accounts the TSCO may find it more practical to have separate registers for Top Secret messages or for other specialized types of documents. Assign each register page a consecutive control/page number to facilitate determination of completeness. The Top Secret Control/register page number must be entered on the document as well as on the register page. Control/register page numbers may be composed of any number of elements, so long as the final numbers constitute consecutive page numbers. Information such as calendar year, office symbol, and register breakout may be included in the control/

register page number, for example, 75–DAAS–M20. This control/register page number would indicate the 1975 register maintained by DAAS, message register, page 20. Use continuation pages when the front and back of the form have been filled or, if desired, when changes are received for basic documents recorded on the initial page. Assign the same control/register page number to the continuation page with an alphabetical suffix A, B, C, etc. When the material is posted to the register, the entry remains active until the TSCO either makes final disposition of the material or recontrols it to a more current register entry. With either of these actions the entry becomes inactive. Final disposition of material consists of transfer to another TSCO, destruction, posting to or incorporation with another recorded document, or downgrading/declassification. A register page remains active as long as there are active entries on it. A page becomes inactive when all entries on it are inactive. In large accounts, particularly when only a few of the register pages have active entries, it is frequently practical to maintain an active and an inactive section of the register. Pages are placed in the inactive section of the register when all entries on the page have become inactive. These pages retain their original control/register page numbers to insure that completeness of the entire register, consisting of both the active and inactive sections, can be ascertained. Mark the last page of a register for each calendar year indicating that fact; for example, "This page (number ___) is the last page of the Top Secret Register, calendar year 19 __.

(1) A register is active until each page has been made inactive. The length of time a register, for any year, remains active is determined by the TSCO responsible for the maintenance of the register; however, registers should be closed as soon as feasible to preclude maintaining more active registers than necessary. To close a register, transfer all active entries to the current year register, and close the active entries in the prior year register by a recontrolling remark showing the control/register page number of each item in the new register (§ 850.140, item 21). Copies of pages on which there are only active entries, may be placed in the register to be closed, and the original pages renumbered and placed in the new register. Place a recontrolling remark on both the original and copy pages showing the register page number from or to which the page was transferred (§ 850.-140). When all entries on all pages of the register have been properly made inactive, the register becomes inactive.

(2) When the AF Form 143 is used as an internal receipt record for signature by a person in a specified element served by a primary or subordinate TSCO, include the fact that it is an internal transaction, so that audit/inventory team members will not mark an internal transaction as audited.

(3) When several copies of a Top Secret document are recorded on a page and there have been transactions pertaining to the various copies of the document, the TSCO may at any time draw a line across the register page just below the last entry and bring down all active items below the line. Internal transactions signed on the register must be resigned below the line. The audit/inventory team indicates with a single notation that all entries above the line have been audited. Subsequent audits are concerned only with entries below the line. Only the TSCO, deputy TSCO, or his agents may draw the line, and not an audit/inventory team.

(c) Disposition of Top Secret Registers. Dispose of Top Secret Registers in accordance with AFM 12–50.

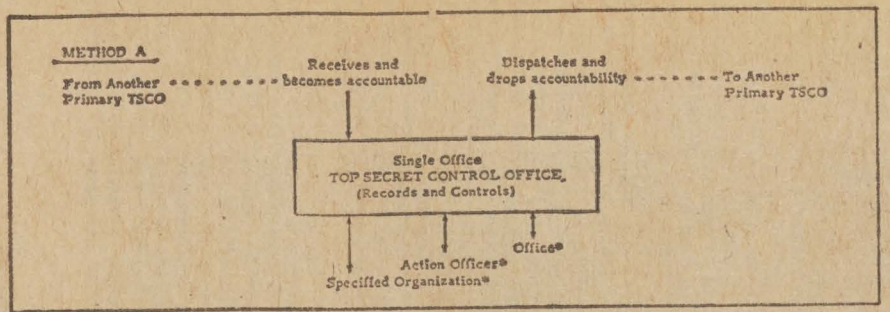
(d) AF Form 144, Top Secret Access Record and Cover Sheet:

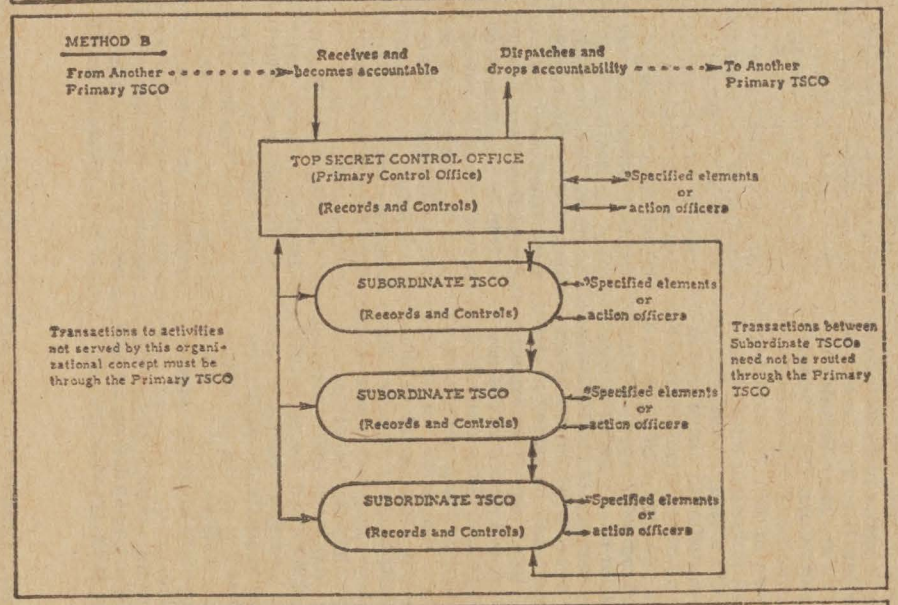
(1) Requirement. Each person who has knowledge of, or who has had access to, an item of Top Secret information must be identifiable. When a Top Secret document is initially developed, the originator initiates a record identifying the Top Secret document concerned on which to identify by name, office, and date each person who is afforded access to Top Secret information contained in or revealed by the Top Secret document. The person in possession of the document is responsible for ensuring that the name of any person afforded access to the information contained in or revealed by the document is entered on the access record for the document. AF Form 144 is available for this purpose. The name need appear only once on the AF Form 144, regardless of the number of times the individual has access. The AF Form 144 is attached to and remains with the Top Secret document as long as the document remains within the same Top Secret control system. If the Top Secret document is destroyed, downgraded, or declassified, the access record is removed and filed by the Top Secret control officer who accomplishes the destruction or regrading. If the document is transferred outside a Top Secret control system the access record is removed and filed by the dispatching Primary Top Secret Control Officer. The receiving Primary Top Secret Control Officer, on receipt of the document, initiates a new access record on which to record access afforded to persons within his Top Secret control system. When more than one copy of a Top Secret document is being used separately within a Top Secret control system, an access record is attached to each copy so used. The access record is retained for two years beyond the date the Top Secret document is destroyed, transferred, downgraded, or declassified, after which time it may be destroyed, in accord with AFM 12–50.

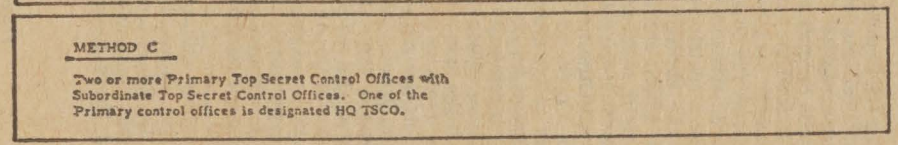
(2) Alternate Procedure. In the interest of economy and efficiency, a commander may authorize the use of the following alternative procedure in lieu of (1) above. Top Secret control offices, file rooms, communications and message centers, and printing and reproduction activities engaged in processing a large volume of Top Secret material need not require permanently assigned personnel to be recorded on AF Form 144, pro-

vided that entry to such areas is limited to assigned personnel, and such persons are readily identifiable as having had access on any given date.

§ 850.139 Top Secet control organizational concept.







*Documents released to these elements remain active on the Top Secret Control Office register and the TSCO remains responsible for control. Top Secret documents originated by elements served by a TSCO must be recorded with that TSCO.

§ 850.140 How to complete an AF Form 143.

ITEM	ENTER
1	ARFCOS or other container number in which document was transmitted.
2	Organization and office address symbol of document originator.
3	Number assigned to document by originator.
4	Number of copies received.
5	Date register page is prepared.
6	Unclassified document description. Record type, subject, title, and date. Describe attachments fully, and include any copy numbers, and number of copies when different from basic document. When basic document is a letter of transmittal, indicate classification when attachments are withdrawn.
7	Copy numbers of Top Secret documents.
8	Organization or office to which copy is transferred (see note).
9	Date document is transferred (see note).
10	X when copy is transferred to an action individual or specified element served directly by the TSCO (see note).
11	Signature of action individual served directly by TSCO, or the TSCO, deputy, or agent to whom document is transferred. When it is not practical for receiving TSCO to sign on register, enter "See AF Form 310" (see note).
12	X in pencil when document is retained in TSCO custody.
13	File designation in pencil when document is retained in TSCO custody.
14	X when document is returned from action individual.
15	Date document is returned.
16	Signature of TSCO, deputy, or agent receiving document returned. This relieves the action individual of responsibility for the document. Action individual must observe this entry. If document is to be transferred, repeat items 7 thru 10 as necessary in the next open section and enter "See section _____" in remarks.
17	X in appropriate box for action taken.
18	Date document is destroyed.
19	Signature and grade of destroying/certifying official.
20	Signature and grade of witnessing official.
21	"Posted" and entry/destruction cross-reference when document is a change or amendment; "recontrolled to _____" when document is recontrolled separately from all other active documents on the same register page, and any other information that would aid in control of the document. Do not check "returned" for partial returns.
22	Date of audit and initials of auditor.
23	Control/register page number of primary TSCO when document is transferred to a subordinate account.
24	Control/register page number within your account from/to which entries have been transferred when all active entries recorded on the page are recontrolled to a new page.
25	Alphabetical suffix of the next continuation register page, if one is used.
26	Consecutive control/register page number. To continue register pages, use the same number with an alphabetical suffix.

NOTE: Leave blank for documents retained in TSCO custody.

§ 850.141 Top Secret inventories.

A special audit and inventory (audit/inventory) is made on change of the control officer. Additional audit/inventories may be made at any time when directed by the TSCO appointing authority. The audit portion of the audit/inventory relates to registers and other records used for the control of Top Secret documents.

(a) Scope. An individual audit/inventory is conducted for each primary or subordinate Top Secret control account.

(b) Audit/Inventory Personnel. The audit/inventory is conducted by appropriately cleared personnel selected for their reliability, competence, and maturity. At least one member of each audit/inventory team should be familiar with Top Secret control procedures. Neither the TSCO nor a deputy TSCO of the account undergoing audit may serve on the audit/inventory team. When an audit/inventory is to be conducted because of transfer or reassignment of the TSCO, the succeeding TSCO may conduct the audit/inventory assisted by additional personnel when necessary.

(c) Procedures. First, determine that the register is complete—that is, all pages are available and accounted for. The audit and inventory portions may be done separately or concurrently.

(1) The audit portion of the audit/inventory is concerned with verifying register entries which reflect that documents have been transferred to another account, recontrolled to a later register entry, downgraded/declassified, or destroyed. Verify, mark "audited," date, and initial each entry where there is:

(a) A receipt covering transfer of the document to another Top Secret Control account. (Normally, the tracing of documents from one account to another to verify receipts or other actions is not required.)

(b) A recontrolled document.

(c) An authorization for document downgrading or declassification.

(d) A certificate of destruction.

(e) Certification that the document has been posted to or incorporated into another recorded document.

(2) Properly authenticated receipts, destruction certificates, or other such documents required to authenticate register entries are accepted without further verification in the absence of contra-indications. An entry marked "audited" and initialled is not reaudited. When an entry is marked "inventoried" or marked with any marking other than "audited," the team must determine the meaning of the entry and correct it. If appropriate, the entry should be remarked "audited," dated, and initialled. Register entries showing internal transactions are not marked "audited." Entries for documents being transferred to another account for which suspense receipts are held need not be marked "audited".

(3) The inventory portion of the audit/inventory consists of the actual sighting of each item for which entries on the register show the TSCO is still accountable, and an examination of all authorized Top Secret material possessed to make sure that all material on hand has been entered in the register. No remarks, such as "inventoried," are placed on the register. Temporary receipts held by a TSCO during transfer of a Top Secret document from his account to another are accepted for inventory purposes. Accountability may not be dropped by the dispatching TSCO until a signed receipt has been received from the intended recipient TSCO. Audit/inventory personnel should take special note of any temporary receipt held in the account for an extended time without followup action. Documents receipted for as internal transactions must be sighted.

(4) Audit/Inventory Reports:

(a) Audit/inventory reports are prepared for the appointing authority of the TSCO on each audit/inventory performed. These reports include:

(1) Names and sample initials of audit/inventory personnel;

(2) The dates during which the audit/inventory was conducted;

(3) A listing of any Top Secret material reflected in the register as being the responsibility of the TSCO which could not be properly accounted for;

(4) A listing of any Top Secret material in possession of the TSCO or any elements served directly by him which had not been entered in the register;

(5) Any other discrepancies observed;

(6) Recommendations (if any);

(7) A statement that all Top Secret material was inventoried, and the fact that no discrepancies were noted if this is the case.

(b) The appointing authority reviews the report, takes corrective action as necessary (including action under subpart G when required), and files a copy of the report for reference during the next audit/inventory. AFM 12-50 authorizes destruction of these reports one year after the completion of the next audit/inventory. When possible, discrepancies noted should be resolved during the audit/inventory.

(5) Inventory of ERDA Top Secret Documents. Top Secret documents originated by the ERDA that are in the possession of the Air Force are inventoried semiannually, and a copy of the inventory is furnished to ERDA. The regular annual inventory of Top Secret material is the basis for one of the inventories required by this paragraph. In the case of AEC-originated Top Secret documents released to Air Force contractors, the Air Force commander or office chief who has released the document also is responsible for the inventory and report on that document. He ascertains that the documentment is in the custody of the contractor at the time the inventory is made. If the contractor has the document, it must be included on the list sent to ERDA, and a notation added to show the contractor as the holder. As an alternate procedure, the releasing authority may arrange for the DOD contractor to send a list of all ERDA originated Top Secret documents, held by him in connection with a DOD or Air Force contract, directly to ERDA after coodinating with all other interested releasing authorities. Lists prepared in accord with either of the above procedures are forwarded directly to: Document and Information Security Branch, Division of Security, US Energy Research and Development Administration, Wash DC 20545. Negative reports are not required.

(6) Special Audit Record. When a register contains inactive items only, the record of audit may consist of a single entry on the last page or on a separate page of plain bond paper attached to the last page of the register as follows: "in accordance with AFR 205-1, (identity account) Top Secret Register, pages ____ through ____, for calendar year ____ is audited effective ____," and certified by the audit team chief. When a register contains both active and inactive items, the record of audit may consist of a single entry on the last page or on a separate page of plain bond paper attached to the last page of the register as follows: "In accordance with AFR 205-1, (identify account) Top Secret Register, pages ____ through ____ for calendar year ____ is audited effective ____, with the following page exceptions: Pages ____, ____," and certified by the audit/inventory team chief. Subsequent audit/inventories will be concerned only with excepted pages.

§ 850.142 Reproduction and retention.

See § 850.130.

§ 850.143 Top Secret, receipts.

Top Secret material is receipted between Top Secret Control Officers on AF Form 310, Document Record and Receipt. AF Form 143 is used whenever practicable for internal receipting or permanent receipting between primary accounts on the same installation.

§ 850.144 Top Secret, serial numbering (see paragraph 7-209f).

Serial numbering of Secret and Confidential documents is discouraged; however, when used, the system for the identification of reissues and reproductions prescribed for Top Secret in § 850.130 apply.

§ 850.145 Secret.

The control system for Secret material is based on the limited use of receipts in transmitting documents between geographically separated units and in maintaining certificates of destruction. Active accountability records or logs that reflect a running inventory of classified documents are not required. (Those on hand, including the active accountability section of the AF Form 310 file, may be destroyed.) In lieu of maintaining an active accountability file, each activity that prepares or reproduces a Secret document must insure that the retained record copy reflects the identity of each activity that receives a copy of the document. When all addressees are not included in the address line, distribution list, records supporting a Secret publication or when secondary distribution is

made (after reproduction), annotate the retained record copy to reflect complete distribution. Secret material held with HQ USAF/IN COMINT accredited areas must be handled, controlled and accounted for in accord with USAF INTEL 201–1. Receipts are required only as prescribed below.

§ 850.146 Secret receipting requirements.

Internal receipting within an Air Force activity is not required and is discouraged. However:

(a) Obtain a receipt for Secret material released or transmitted to an activity outside the US Air Force in accord with para 8–402b. Receipts are required for NATO, SEATO, and CENTO, IAW AFRs 205–43, 44 and 45.

(b) Obtain receipts for documents transmitted through a mail distribution system (for example, the US Postal Service, or base distribution system).

(c) AF Forms specified in § 850.177 are available for this purpose.

§ 850.147 Completion and disposition of AF Forms 310.

Use AF Form 310 to obtain a receipt for a Secret document or a Confidential document requiring a receipt. If the document requires a receipt, address the document to the office that will use it or act on it (action office), and include the correct office address symbol (AFM 10–6). Prepare the AF Form 310 as shown in the instructions in § 850.152. Enter the same address on the form that is used on the document (that is, to the action office, with the office address symbol). Under "container number" enter the registry or other container number (AFM 10–5) by which the document is ready for dispatch:

(a) Withdraw a copy of the AF Form 310 and place it in a suspense file, pending return of the signed receipt.

(1) If receipts have not been returned from the intended recipient within 20 days within the CONUS, or 30 days outside the CONUS, send a copy of the original receipt marked "Tracer-Original Not Received." (Include the registry or container number under which documents were dispatched.)

(2) If the intended recipient did not receive the container, begin tracer action through the administrative communications distribution system.

(a) If the postal system is used, the registry section of the administrative communications distribution center will assist in filing an inquiry for loss or rifling of mail.

(b) If, as a result of these actions, the container is proven to be lost, or if there are other discrepancies that result in a document not being accounted for between sender and intended recipient, take action directed by Subpart G.

(b) If a suspense (followup) reply to the communication is required, use another copy of AF Form 310 in the manner prescribed by AFM 10–1, para 3–5, for AF Form 388.

(c) Forward all remaining copies of AF Form 310 with the document(s) to be dispatched.

(d) When dispatching a document to two or more addresses, enter "SEE DISTRIBUTION" in the "TO" element of the AF Form 310. Two line spaces below the document description annotate the distribution and number of copies. If there is not enough space on the front to accommodate the entire distribution and copy listing, continue on the reverse side.

§ 850.148 Processing incoming communications.

When you receive an accountable communication in a sealed container transmitted by a postal registry number or other container number:

(a) Inspect each sealed container for evidence of tampering, and determine that documents received are as described on the accompanying AF Form 310. If there are any discrepancies, report the facts immediately to the sender, and return an annotated and signed copy of the AF Form 310 to the sender.

(b) Remove the top copy of the accompanying AF Form 310, complete the receipt portion, and return it to the sender. (Before signing this top copy, remove it, so that the remaining copies can be used for further receipting, if required.)

(c) Withdraw and destroy remaining copies of the AF Form 310, unless further dissemination requires their subsequent use.

(d) Active accountability files are not required.

§ 850.149 How to file AF Form 310.

(a) Suspense Records. These are copies of AF Form 310 filed to assure the return of signed receipts or, in the case of "on-loan suspense," return of the document.

(1) Normal suspense. Arrange copies in the order which provides easiest reference. For example, copies might be arranged by date of dispatch, by container number, or by the date the signed receipt is expected to be returned. When the signed receipt is returned, place it in the inactive accountability file and destroy the suspense copy.

(2) On-loan suspense. File the receipt for a loaned document in a separate section of the suspense file. File it in the manner which will provide the easiest reference (generally this is by the date the document is expected to be returned.) Upon return of the document, withdraw the receipt from the "ON LOAN Suspense" and either: give it to the borrower in exchange for the document being returned; or refile it in the inactive accountability file if another receipt has been prepared by the borrower for you to sign.

(b) Inactive Accountability Records. These are signed copies of AF Form 310 acknowledging receipt of documents transferred and certification of documents destroyed.

(1) File the copies in the annual block by the year of the latest action (transfer, declassification, retirement, destruction, etc.); then, within the block, file individual copies in the order that provides the easiest reference. Generally, they should be filed chronologically by date of the document.

(2) Destroy the annual block after the retention period specified in AFM 12–50.

§ 850.150 Confidential.

Receipts are not ordinarily required for Confidential documents (reference § 850.176).

(a) Confidential documents originated or reproduced will reflect each recipient's functional address symbol on the file copy. Exceptions: If the distribution is shown on the document, or in the records prescribed for an established publications distribution system, you need not record the distribution on the record copy of the document.

(b) The notation required by (a) above on the record copies, or on the distribution records, of a Confidential document constitutes the control record. Do not use AF Form 310 or other special forms to control them.

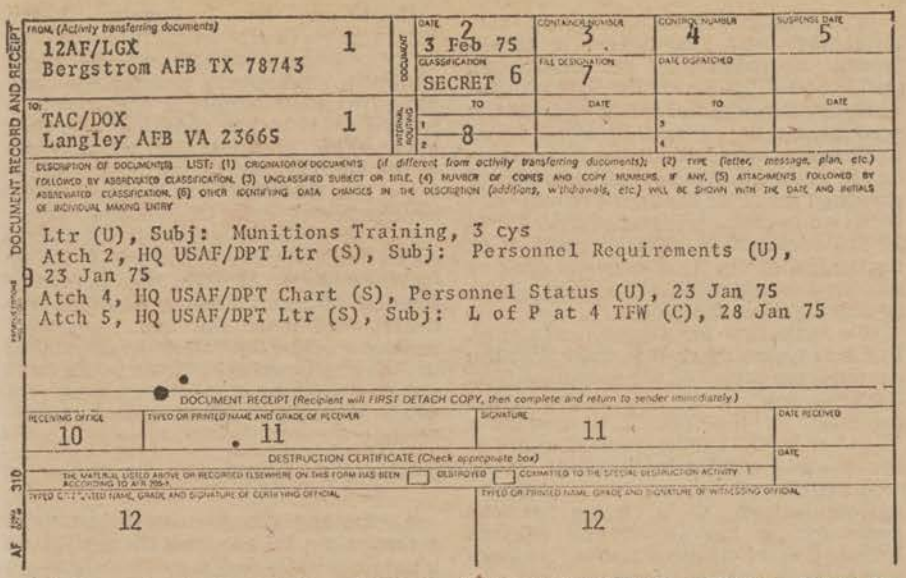
(c) Copies of Confidential documents are to be filed as prescribed by AFM 12–20. Dispose of them as prescribed by AFM 12–50 and this part.

(d) Offices that coordinate, sign, print, reproduce, or route Confidential documents that are prepared and controlled by another office, will not keep file copies of the documents for the sole purpose of control.

§ 850.151 Receipt of classified material.

Procedures for the screening, segregation and distribution of incoming classified communications are contained in AFM 10–5. Procedures for receipt of classified material are contained in AFMs 75–1 and 75–2.

§ 850.152 Instructions for preparing the AF Form 310, document record and receipt.



DOCUMENT RECORD AND RECEIPT

FROM (Activity transferring documents)
12AF/LGX 1
Bergstrom AFB TX 78743

DOCUMENT: DATE 2: 3 Feb 75 | CONTAINER NUMBER 3: | CONTROL NUMBER 4: | SUSPENSE DATE 5:
CLASSIFICATION: SECRET 6 | FILE DESIGNATION 7: | DATE DISPATCHED:

TO:
TAC/DOX 1
Langley AFB VA 23665

INTERNAL ROUTING: TO: 1 8 | DATE: | TO: 3 | DATE:
2 | 4

DESCRIPTION OF DOCUMENT(S): LIST: (1) ORIGINATOR OF DOCUMENTS (if different from activity transferring documents); (2) TYPE (letter, message, plan, etc.) FOLLOWED BY ABBREVIATED CLASSIFICATION; (3) UNCLASSIFIED SUBJECT OR TITLE; (4) NUMBER OF COPIES AND COPY NUMBERS, IF ANY; (5) ATTACHMENTS FOLLOWED BY ABBREVIATED CLASSIFICATION; (6) OTHER IDENTIFYING DATA CHANGES IN THE DESCRIPTION (additions, withdrawals, etc.) WILL BE SHOWN WITH THE DATE AND INITIALS OF INDIVIDUAL MAKING ENTRY

Ltr (U), Subj: Munitions Training, 3 cys
Atch 2, HQ USAF/DPT Ltr (S), Subj: Personnel Requirements (U),
9 23 Jan 75
Atch 4, HQ USAF/DPT Chart (S), Personnel Status (U), 23 Jan 75
Atch 5, HQ USAF/DPT Ltr (S), Subj: L of P at 4 TFW (C), 28 Jan 75

DOCUMENT RECEIPT (Recipient will FIRST DETACH COPY, then complete and return to sender immediately)

RECEIVING OFFICE: 10 | TYPED OR PRINTED NAME AND GRADE OF RECEIVER: 11 | SIGNATURE: 11 | DATE RECEIVED:

DESTRUCTION CERTIFICATE (Check appropriate box) | DATE:

THE MATERIAL LISTED ABOVE OR RECORDED ELSEWHERE ON THIS FORM HAS BEEN ☐ DESTROYED ☐ COMMITTED TO THE SPECIAL DESTRUCTION ACTIVITY ACCORDING TO AFR 205-1

TYPED OR PRINTED NAME, GRADE AND SIGNATURE OF CERTIFYING OFFICIAL: 12 | TYPED OR PRINTED NAME, GRADE AND SIGNATURE OF WITNESSING OFFICIAL: 12

AF Form 310

(a) Do not enter any information on this form that might cause it to be classified. Also, do not use a letter of transmittal to forward a separate letter in order to avoid preparing an AF Form 310.

(b) To complete, make the entries as follows (see key numbers above):

(1) Enter the address as required by the method of dispatch; use the functional address symbol to indicate the action (AFMs 10–5 and 10–6). When two or more addresses are to receive the same document you may enter the words, "SEE DISTRIBUTION" in block 1 after the "TO:" caption. See item 9 for instruction on listing addresses.

(2) Enter the date of the document being recorded.

(3) Enter the US Postal Registry number, or other assigned container number (AFM 10–5).

(4) Enter the control number if a Top Secret document is being dispatched.

(5) Enter the suspense date; may be entered by the receiving office or by the sending office, as appropriate.

(6) Enter the highest classification of the document being described.

(7) The file designation need not be shown.

(8) May be completed by the sending office before the document is dispatched, or may be completed by the receiving office; internal routing may be shown under "Description of Document," if preferred.

(9) Prepare the description block in columnar format if possible; linear format should not be used unless absolutely essential. Classification abbreviations (TS), (S), (C), (TS–RD), etc. following the subject or title become a part of the subject/title and will be recorded on receipts, registers, logs, etc., to properly describe the document. When it is necessary to abbreviate a subject or title because of its classification, use the abbreviated version of the actual classification assigned them, as shown above. Do not use the abbreviation (U) after the short title, however. If the document is a message, use the identification elements prescribed in AFM 100–20. List each classified attachment that would require an AF Form 310 if transmitted separately; include a complete description, as illustrated, and show the number of copies of each attachment if this is different from the number of copies of the basic document being described. (Do not list any unclassified attachments.) If the words "SEE DISTRIBUTION" were entered in block 1 of the example, then list the intended addresses two line spaces below the last document description. The reverse side may be used as a continuation sheet.

(10) For use by the receiving office.

(11) Self-explanatory; the recipient will enter the typed or printed name; must be the same as the name in the signature.

(12) Self-explanatory; to be completed by the destroying and witnessing officials. Written name must be the same as the typed or printed name in each case.

Subpart J—Transmission

§ 850.153 Removal of classified material.

No one is authorized to remove classified material from the installation or organization having responsibility for its custody without specific permission from the commander concerned or his designated representative.

§ 850.154 Top Secret, accompanied State Department diplomatic pouch.

(a) All Top Secret material originating in the United States which is destined for an oversea installation serviced by diplomatic pouch is delivered by another authorized means of transportation to the Department of State, 2201 C St. NW, Wash DC 20521. The outer cover shows the Department of State as the addressee and the innermost cover shows the address of the specific recipient. The pouch prepared by the Department of State constitutes an adequate outer cover during transmission.

(b) Top Secret material originating overseas which is destined for an installation serviced by diplomatic pouch is packaged as prescribed in the DOD ISPR and this part and is then delivered to the nearest US embassy, consulate, or mission, for transmission to the addressee. This method is used exclusively to transmit all classified material through, or within, Communist-controlled countries or any other foreign country where the material would conceivably be subject to customs inspection or other examination.

§ 850.155 Top Secret, protected wireline distribution systems.

A protected wireline distribution system consists of wirelines, subscriber sets, and terminal equipment to which electromagnetic and physical safeguards have been applied to permit secure transmission. These protected systems may be authorized by HQ USAF/PRCOC based on the criteria outlined in AFM 100–45. It is technically feasible to connect installations with a protected wireline distribution system; however, to meet security requirements and construction criteria, it usually is prohibitive from the standpoint of cost and manpower to maintain continuing, adequate control of the off-base wireline links.

§ 850.156 Top Secret, selection of personnel.

Within the Air Force, personnel selected for the above duties must possess a current final Top Secret clearance based on a favorable background investigation completed in accordance with AFR 205–32. The final selection is based on demonstrated stability, reliability, maturity, and judgment. The official who appoints the Top Secret Control Officer makes the selection.

§ 850.157 Secret, transmission by diplomatic pouch.

Secret material transmitted by accompanied Department of State diplomatic pouch may be sent to Department of State (or other State Department facility) as the addressee. Prepare the inner cover as prescribed in § 850.154 above.

§ 850.158 Secret, postal limitations.

When registered material has been signed for by the addressee or his representative, it cannot be reintroduced into postal channels with the same outer wrapper or registry number under which it was received. It must be rewrapped and reregistered.

§ 850.159 Secret, protective security service.

See the Industrial Security Regulation DOD 5220.22–R and AFM 75–2, chapter 226, for detailed procedures.

(a) Top Secret material, certain Restricted Data and Crypto material are

not shipped by commercial carrier without being protected by authorized couriers, and by guards if necessary. Guards are not armed except as provided in § 850.164.

(b) Within the LOGAIR System, Secret material may be receipted for on a terminal to terminal basis provided:

(1) AF Form 127, Traffic Transfer Receipt, is executed for each item of material by LOGAIR terminal personnel at points of origin, destination, and each intermediate stop at which cargo is offloaded and depalletized for further transmission.

(2) LOGAIR aircrew personnel are not required to sign an individual AF Form 127 for palletized cargo provided a cleared crewmember acknowledges receipt for the aircraft load by the number of pallets on the cargo manifest or similar form which indicates which pallets require Protective Security Service (PSS).

(3) Aircrew briefing procedures include a reminder of LOGAIR responsibility for the protection of PSS cargo at any en route landing at points other than LOGAIR terminals.

§ 850.160 Secret, other carriers.

Within the Air Force, aircraft commanders are not assigned this duty; appropriately cleared crewmembers or passengers are selected. Classified material is not transported in external appendages to aircraft. Armament bays of aircraft may be used to transport classified material only when they are properly secured and kept under surveillance until the classified material is receipted for by the addressee or his authorized representative.

§ 850.161 Confidential.

Transmission by First Class Mail. See AFM 10–5.

§ 850.162 Confidential, signature security service.

See AFM 75–2, Chapter 226, for detailed procedures.

§ 850.163 Consigner-consignee responsibility for shipment of bulky material, reports of shipment.

Notifications to outloading terminals should be by telephone or teletype "Report of Shipment" (REPSHIP). See AFM 67–1, Volume I, chapter 6 for additional instructions on the shipment of classified material.

§ 850.164 Transmission of restricted data, EOD publications.

Nuclear weapons EOD publications known as EOD Procedures are transmitted by Armed Forces Courier Service (ARFCOS) when destined for delivery on foreign soil. From the time of pickup on foreign soil by command/unit from ARFCOS, EOD Procedures being moved by land outside US-controlled military installations are guarded by two men, one of whom must be armed when authorized by applicable international agreement and national policy.

§ 850.165 Routing of classified transmissions.

(a) Routing Transmissions. All material classified Top Secret is transferred, transmitted, or dispatched through the TSCO. Material classified Secret or Confidential is routed from the accountable or controlling office direct to the office that will use or take action on the material. Receipt and dispatch of classified material through the base distribution system is described by AFM 10–5. All classified material received or dispatched by electrical message must be routed through established secure telecommunication channels.

(b) Authority for Opening Material. Inner wrappers marked to show that the contents are classified are opened only by the addressee; in the case of Top Secret material, by the TSCO, or a deputy TSCO or TSCO agent; or, in the case of Secret and Confidential material, by the accountable officer, or his designated representatives. Only those persons necessary for the proper and efficient transaction of business may be authorized to open classified material.

(c) Inspection of Wrappers. Before opening a package of classified material, the seals and both outer and inner wrappings must be examined to determine if there has been any tampering. If evidence of tampering exists, an inquiry is undertaken promptly, and the facts are reported to the dispatching activity. In such cases, wrapping material of the package concerned should be retained as long as required for investigative purposes.

(d) Return of Receipts. Immediately after opening a container of classified material, check the contents against the receipt inclosed. Date, sign and return the receipt promptly. (Facsimile signatures are not authorized.)

(e) Tracer Action. Each office or activity that dispatches classified material requiring a receipt establishes an international suspense for receiving the return receipt. If the receipt has not been received within the time periods prescribed in § 850.145, tracer action is taken. Details pertaining to receipts for Secret material and Confidential material requiring a receipt are given in Subpart H.

§ 850.166 Intra/interbase transmission.

See AFM 10–5 for specific procedures.

§ 850.167 Sending classified files to records centers.

(a) Top Secret. Normally, Top Secret documents destined for records centers should be downgraded before transmission to such centers. However, if Top Secret documents must be forwarded to records centers, they are prepared for transmission in the same manner as any other Top Secret material. All documents must be listed individually on SF Form 135, Records Transmittal and Receipt. The procedures in b below may be employed in preparing current bulk files of Top Secret material for transmission when a unit is transferred to another station.

(b) Secret and Confidential. When Secret and Confidential files are too bulky to be sent to record staging areas and records centers by means authorized for individual documents, they must be packed in shipping containers according to AFM 12–50 and transmitted by one of the methods authorized in this chapter of the DOD ISPR or this part. Normally, Secret and Confidential documents are listed categorically by record series and inclusive dates on SF 135 or Optional Form 11 (OF 11), Reference Request—Federal Records Centers. For Secret documents, this listing also may include a folder-by-folder description of the records involved. These procedures may be used to transmit current files when a headquarters or unit is transferred.

§ 850.168 Transmission by pneumatic tube systems.

A commander may authorize the use of a pneumatic tube system for the transmission of classified material within an installation or building, provided he makes a specific determination in each case that the equipment, tube installation, safeguards, and operating procedures afford the required degree of security for the classified information involved; and, as a minimum:

(a) The tube system is contained entirely within the confines of an installation or building under US control; the system is installed in a manner which precludes tampering with or surreptitious access to the classified materials; and the tube or carrier is a direct point-to-point channel between the two transmission stations.

(b) The classified material is transmitted only when an authorized recipient, who has been positively identified by the sender, is in place at the receiving end of the tube; has been alerted to the intended transmission; and, when a receipt is required, signs and returns it immediately, via the tube, to the sender.

(c) An immediate reaction capability exists to retrieve the classified material if the tube system malfunctions, and security measures are instituted to safeguard the material until it is retrieved.

(d) Specific directives and procedures are established to govern the operation and use of the system, and close supervision is exercised to assure continuing compliance with the operating procedures and adequate protection for the classified material.

§ 850.169 Exemption from customs examination.

(a) US Customs. Classified documents are carried through a US customs station only by an official courier, designated in travel orders, or by the Armed Forces Courier Service. The documents must be inclosed in an official cover.

(b) Foreign Customs. The procedures in this section do not exempt documents from examination by customs representatives of foreign nations. Therefore,

officers responsible for designating official couriers must consider the possibility of such examination resulting from stops en route. If risk of such examination is anticipated, these officers select another authorized means of transmission. (An accompanied State Department diplomatic pouch provides the only method of transmission that exempts official communications from all customs examination.)

§ 850.170 Designation of official couriers.

(a) Selection. Individuals authorized to carry classified material across a national boundary are designated as official couriers.

(b) Travel Orders. A request for travel orders for an individual referred to above includes a request that he be designated an official courier in his orders if he must carry classified documents through any customs station. If the individual is travelling to or through a NATO member country, NATO travel orders as prescribed by AFR 205–43, are also required.

(c) Courier Letter. The officer who requested the travel orders signs and furnishes an unclassified courier letter to the courier. The letter should be addressed "To whom it may concern," and identifies the courier by name, grade (or civilian rating or position), SSAN, and organization. It also must identify, by address, return address, and any other distinguishing mark or notation, each official cover that is to be carried by the courier, as in the following example:

Subject: Identification of an Official Courier.
To whom it may concern:

1. Captain Randolph X. Roe, 215—14—0833R, USAF, is acting in an official capacity as courier for HQ USAF. He is carrying one brief case and package from the Chief of Staff, USAF, addressed to PACAF, APO San Francisco 96553.

2. This brief case and package are further identified by the inscriptions on the covers "OFFICIAL UNITED STATES AIR FORCE COMMUNICATION, EXEMPT FROM EXAMINATION" and the signature of the Executive, Office of the Deputy Chief of Staff, Operations, HQ USAF.

For the Chief of Staff.

(Signature element).

(d) Material Carried for Reference Purposes. If the courier will use the classified document while he is on temporary duty and return it when he returns, the courier letter should so state. Such a letter must include a statement that the material is for the courier's use in the performance of his official duties.

(e) Restriction on the Use of Courier Letter. An official courier is not designated to convey personal communications or objects; and no such communication or object may be placed in an official cover referred to in this section.

(f) Preparation of Official Covers:

(1) Definition. For the purpose of this section, an "official cover" includes any sealed envelope, packet, case, or other cover which contains classified documents and is prepared as directed in (2) below.

(2) Certification. The outer surface of each official cover to be carried by a courier must be marked "Official United States Air Force Communication, Exempt from Examination," followed by the official signature of the officer who signed the courier letter describing the cover, as in the following example:

Department of the Air Force
Headquarters, United States Air Force
Washington, DC 20330

Official Business

OFFICIAL UNITED STATES AIR FORCE COMMUNICATION EXEMPT FROM EXAMINATION

PACAF
APO San Francisco 96553
Robert A. Doe
ROBERT A. DOE
Colonel, USAF
Executive, Office of
Deputy Chief of Staff, Operations

§ 850.171 Classified transmission to multinational combined commands.

The USAF participates as a member in a number of integrated multinational commands or activities such as North American Air Defense (NORAD), Supreme HQ. Allied Powers Europe (SHAPE), and Inter-American Defense College (IADC).

(a) There are a number of such commands or activities which are jointly manned by nationals of the participating countries. Therefore, each Air Force activity must be fully aware that the transmission of any classified material to such integrated commands is tantamount to "Foreign Release." Such a transmission will contain a statement that the requirements for foreign release as outlined in AFR 200–9 have been considered and that the material is, in fact, releasable. The statement will read as follows:

"This transmission has been evaluated for releasability to (integrated command or activity) in accordance with AFR 200–9 and has been determined to be releasable to (identify foreign nations or pact organization)."

(b) If the material involved is intended for US personnel only, address it to the US unit of command concerned (for example, CINCONAD is a US element of NORAD); see AFM 10–4 for other activities.

§ 850.172 Envelopes or containers.

See AFM 10–5 for preparation of envelopes and containers.

§ 850.173 Addressing, material containing critical nuclear weapon design information.

Envelopes enclosing Critical Nuclear Weapon Design Information bear, in addition to the Restricted Data marking, the Critical Nuclear Weapon Design Information marking plus the notation: "To be opened only by personnel authorized access to Critical Nuclear Weapons Design Information." Inner envelopes enclosing Formerly Restricted Data but no Restricted Data bear the Formerly Restricted Data marking.

§ 850.174 Receipt systems, Top Secret.

Normally, Top Secret material is receipted for on AF Form 310; however, transactions may be receipted for on AF Form 143 as prescribed in Subpart H.

§ 850.175 Receipt systems, Secret.

Receipts for Secret material also are accomplished when Secret material is entered into a distribution system (see § 850.146).

§ 850.176 Receipt systems, confidential.

Within the Air Force responsible authorities may require receipts for Confidential material in transactions which involve:

(a) Foreign disclosure.

(b) Aircraft and missile delivery.

(c) For material delivered to persons or agencies outside the Executive Branch of Government (other than DOD contractors).

(d) Cryptographic material when prescribed by other directives.

§ 850.177 Receipt systems, receipt forms.

(a) Authorized Receipt Forms. The following receipt forms, with prescribing directives indicated, shall be used within the Air Force:

Receipts	*Prescribing directives*
(1) AF Form 12, Accountable Container Receipt.	AFM 10–5.
(2) AF Form 127, Traffic Transfer Receipt.	AFM 75–1 and AFM 76–1.
(3) AF Form 208, TF/MPS/CMS Inventory Index.	AFR 55–25, Vol II.
(4) AF Form 310, Document Record and ceipt.	AFR 205–1.
(5) AF Form 349, Receipt for Documents Released to Accredited Representatives of Foreign Nations.	AFR 205–1 and AFR 200–9.
(6) AF Form 510, Aerospace Vehicle Delivery Receipt.	AFM 67–1.
(7) AF Form 627, Application for Registration or Certification of Official Mail or USPS Form 3877, Application for Registration or Certification.	AFM 10–5.
(8) AF Form 777, Message Register Receipt and Destruction Certificate.	AFM 100–20
(9) AF Form 778, Message Receipt Assignment Log.	AFM 100–20
(10) AF Form 779, Message Receipt Control Log.	AFM 100–20
(11) AF Form 1014, Message Delivery Register.	AFM 100–21
(12) AF Form 1022, COMMCEN Message Register.	AFM 100–21

Receipts	Prescribing directives
(13) AF Form 1565, Entry, Receipt and Destruction Certificate.	AFR 205–1
(14) SF 135, Records Transmittal and Receipt.	AFM 12–50
(15) DD Form 1149, Requisition and Invoice Shipping Document.	AFM 67–1
(16) DD Form 1348–1, DOD Single Line Item Release/Receipt Document.	AFM 67–1
(17) ARFCOS Form 1, Armed Forces Courier Receipt to Sender.	AFR 182–14
(18) ARFCOS Form 4, Armed Forces Courier Delivery Receipt.	AFR 182–14
(19) OF 11, Reference Request — Federal Records Centers.	AFM 12–50

NOTE.—A Telecommunications Center may use AF Forms 777, 778, and 779, or AF Forms 1014 and 1022 in lieu of AF Form 310 to account for each Secret or Confidential message, and copies thereof, which it receives or dispatches to agencies which it services. However, AF Form 310 is used for the control of classified messages where that procedure is more practical.

(b) Locally Devised Forms. The use of locally devised forms is prohibited unless an exception is specifically approved in writing by the major command concerned or, in HQ USAF, by the 1143 ABS/SP. Such an exception should be authorized only when modification of a standard receipt form is necessary to permit the use of mechanized distribution or accounting systems.

§ 850.178 Receipt systems, use of AF Form 1565, entry, receipt and destruction certificate.

(a) AF Form 1565 is a multi-purpose form. It may be used as a receipt for the accountable classified document changes, a receipt for superseded accountable classified pages when they are transmitted to another office, an entry certificate or change sheet to post in the basic document, and a certificate of destruction for the accountable superseded pages. The originator may optionally use AF Form 310 in lieu of AF Form 1565 for receipting purposes; however, at least two completed copies of the AF Form 1565 always must be provided for the use of the recipient (see (a) and (b) below). Sufficient copies must be sent to the recipient to provide:

(1) One copy on which to certify the destruction of superseded pages for each copy of each basic publication held by the recipient.

(2) One copy to post as a change sheet in each copy of each basic document held by the recipient.

(3) One copy for return as a receipt for classified change pages (required only when AF Form 1565 is used as a receipt).

(4) One copy for use as a receipt for the superseded pages returned to the originator (required only when the originator requires their return or dispatch to another office in lieu of destruction).

(b) In the case of classified publications, include two completed copies of AF Form 1565 as part of changes which contain page changes to classified publications.

(c) Instructions for completing AF Form 1565 are contained in § 850.179.

§ 850.179 How to complete Air Force Form 1565.

ITEM	A Who Completes	B What To Enter
1	Recipient	Self-explanatory.
2	Originator	Self-explanatory.
3		Addressee; if a multiple addressee, enter "See distribution list."
4	Recipient	Self-explanatory.
5	Originator	Describe the basic document; if the document is Top Secret, also add the control/register page number.
6		Describe the change/amendment and enter the copy number. If the document is Top Secret, leave the copy number blank for the recipient to enter; also, if the document is Top Secret, add the control/register page number.
	Recipient	If the document is Top Secret, enter the copy number.
7	Originator	Describe the sections of the basic document that are being changed; also, indicate any pen-and-ink changes.
8		List the pages to be removed from the document.
9		List the pages to be inserted in the document.
10	Recipient	Enter "X" in the proper box if the form is being used as a receipt for the change.
11		Enter "X" in the proper box if the form is being used as a receipt for superseded material returned to another office for destruction.
12 thru 14		Self-explanatory.
15	Originator	If the form is being used as a receipt for the change, enter the highest security classification of any page being transmitted.
16	Recipient	Copy the number of the basic document, and enter "X" in the proper box.
17 thru 19		Self-explanatory.
20		Enter the highest security classification of any page removed from the basic document.
21		Enter an "X" in the proper box.
22 thru 27		Self-explanatory.

Subpart K—Disposal and Destruction

§ 850.180 Policy.

See AFM 12–50 for destruction of documentary record material. See AFM 67–1, Volume I, Part I, chapter 19 for instructions concerning destruction of classified items of material.

§ 850.181 Methods of destruction, destruction devices.

Classified material may be destroyed by the destruction devices listed in the Federal Supply Schedule as "security equipment" or "for security purposes." Equipment must be selected with caution because the Federal Supply Schedule also lists some destruction devices intended for other purposes which are not guaranteed to preclude reconstruction of documents. The following devices have been approved:

(a) Pulping machines which conform to Federal Specification FF–P–00800 (GSA–FSS) May 17, 1965.

(b) Pulverizing machines which conform to Federal Specification FF–P–00810 (GSA–FSS) June 15, 1965.

(c) Shredding machines listed on the Federal Supply Schedule capable of shredding material to strips $\frac{1}{32}$ of an inch.

§ 850.182 Methods of destruction, classified film or film products.

Classified film or film products should be destroyed by burning or chemical decomposition.

§ 850.183 Methods of destruction, commercial destruction equipment.

Requests for approval of commercial destruction equipment not listed on the Federal Supply Schedule may be submitted through command channels to HQ USAF/ISPIB. Approval normally is limited to equipment which has already been tested and certified by another DOD component. The Air Force normally will not undertake the test and evalua-

tion of additional equipment with the same capability as similar equipment which has already been tested and approved.

§ 850.184 Records of destruction, normal destruction procedure.

Classified material is destroyed by or in the presence of two officials (see § 850.185(4)). One serves as "destroying official" and the other as "witnessing official." They (a) safeguard the classified material entrusted to them until it is actually destroyed; (b) inventory the classified material to be destroyed against the accountability records or destruction certificate; (c) perform or supervise the destruction of the classified material, assure its complete destruction, and ascertain that legible scraps or recognizable parts of the material do not remain in the incinerator or machine or at the destruction site; and (d) complete the certification required below.

§ 850.185 Records of destruction, central destruction procedure—special destruction activity.

The special procedure authorized herein provides a centralized system for the destruction of classified material whereby (a) individual certifying officials prepare the classified material for destruction and authorize the termination of accountability for Top Secret or Secret material, and (b) a "central destruction activity" accomplishes the actual destruction of the classified material, including classified waste.

(1) Installation commanders, wing commanders, or higher, may authorize the use of central destruction procedures.

(2) If a commander authorizes the use of central destruction, he issues explicit written instructions prescribing the procedures to be followed and the responsibilities and functions of the personnel involved. He provides for close overall supervision and for adequate and frequent inspection of the entire process.

(3) Two officials in the office responsible for the classified material are designated to act as the "certifying official" and "witnessing official." They (i) inventory the classified material against control records or a destruction certificate; (ii) place the classified material in a bag or other suitable container (sealed with staples or tape, and when appropriate, bound to prevent its accidental tearing or breaking); (iii) mark the bag or container with the highest classification of the material it contains; (iv) promptly deliver the bag or container to the special destruction activity (no receipt is required for this transaction); and (v) complete and submit the certification required below. (In this case, the normal certificate shall be modified to read, "The classified material listed above has been committed to the special or central destruction activity." The officials sign as "certifying official" and "witnessing official"). On completion of these actions the accountability records are annotated to reflect the destruction of the classified material on the date the material was delivered to the central destruction activity.

(a) The central destruction activity comprises: (i) an official to supervise the destruction process; (ii) appropriately cleared personnel to accomplish the actual destruction under his supervision; (iii) secure facilities for storing the classified material until its actual destruction; (iv) facilities for accomplishing the actual destruction; (v) when applicable, secure means (such as a closed car, van, or truck) for transporting the classified material from the storage site to the destruction site.

(b) The central destruction activity (i) safeguards the classified material until it is actually destroyed; (ii) prevents access to the bags or containers, or to their contents, by anyone not engaged in the actual destruction thereof; (iii) accomplishes the destruction of the classified material; and (iv) assures that no legible scraps or recognizable parts of the material remain in the incinerator or machine or at the destruction site. Once committed to the special destruction activity, the bags or containers must be kept intact, and no one, including the original accountable office, is permitted access to their contents, unless specifically authorized in each case by the commander for inspection or investigation purposes. When a commercial contractor is employed to provide the equipment used for destruction by a method prescribed in (a) above, the contractor is not afforded access to the classified information; the certifying and/or witnessing official personally places the classified material in the contractor-furnished destruction equipment, and remains at the destruction location for the length of time necessary to insure the complete destruction of the material. Under no circumstances is the classified material to be relinquished to the contractor.

(4) Destruction officials and witnessing officials must be appropriately cleared officers, non-commissioned officers or civilian employees selected on the basis of demonstrated reliability, maturity, and judgment. For specific policy regarding the destruction of SIOP-ESI documents, CRYPTO documents, or other special access program documentation, see the publications pertaining to those programs.

§ 850.186 Records of destruction, certificate of destruction.

After destroying Top Secret or Secret material, a completed certificate of destruction shall be furnished to, and retained by, the office which has custodial responsibility for the destroyed material.

(a) Regardless of the form used, the required certificate must include: identification of the material, date of destruction, the certification of destruction, the signatures of the destroying and witnessing officials. The certificate may be made on AF Form 145, Certificate of Destruction of Material, AF Form 310, SF 135, AF Forms 777 or 1565.

(b) On completion of the destruction and the required certification, the accountability records for the classified material shall be annotated to reflect the destruction. The certificates are retained as prescribed in AFM 12–50.

(c) Confidential material is destroyed in the same manner as Top Secret and Secret material except that certificates of destruction and witnessing officials are not required.

§ 850.187 Classified waste.

Classified waste material includes by-products of printing and graphic arts, stencil plates and masters, proofs, overruns, samples, and spoilage. Any of these materials retained for reuse are safeguarded and accounted for in accordance with their classification.

Subpart L—Security Education

§ 850.188 Responsibility and purpose.

Commanders and chiefs of major HQ USAF offices maintain active security education programs for all personnel under their jurisdiction who have access to classified information. The program is operated under the supervision and guidance of the security managers appointed in each activity under § 850.206.

§ 850.189 Scope and principles, job oriented.

Training and indoctrination in the principles outlined in DOD ISPR, chapters I and IV, and in this part, should be job-oriented and keyed to the individual's duties. General information on the total content of the chapters can best be accomplished by individual study, reinforced by seminar discussions and question and answer periods which relate to the individual's assignment.

§ 850.190 Scope and principles, foreign intelligence threat.

The training prescribed by AFR 205–57, Reporting and Investigating Espionage, Sabotage, and Subversion, satisfies the requirements of this paragraph.

§ 850.191 Scope and principles, telephone discussions.

AFM 100–45, Volume I may be used to satisfy the requirements of this paragraph.

§ 850.192 Scope principles, disciplinary action.

As a minimum personnel should be briefed on the requirements of chapters VI and XIV of the DOD ISPR and this part.

§ 850.193 Foreign travel briefings.

Commands or activities conduct these briefings. The servicing AFOSI unit may be requested to assist in their preparation. On completion of the travel, the traveler is debriefed. If this debriefing discloses hostile intelligence effort, report the facts to the servicing AFOSI unit.

(a) To accomplish the desired objective, the defensive security briefing must alert personnel concerned to be on guard against their exploitation by others whose interests may be inimical to those of the United States. To do this, such briefing should contain guidance and general information on the various areas of interest to hostile intelligence services,

techniques used by these services, and on the nature of conduct of activity that could result in individuals being placed in compromising situations.

(b) The content and detail of briefings may vary, depending upon the specific nature and classification of the information possessed by the person(s) being briefed, the level of the office or position they occupy, and the scope and nature of the threat to which their proposed activity might expose them.

§ 850.194 Debriefings.

Use AF Form 2587, Security Termination Statement, for this purpose. Completed statements are retained as prescribed in AFM 12–50. Pertinent portions of the Espionage Act are found in 18 U.S.C. 793 and 794. 50 U.S.C. 783 of the Subversive Activities Control Act of 1950 is an appropriate reference for the Criminal Statutes referred to in this subparagraph of the DOD ISPR. Persons whose duties have involved access to Restricted Data or Formerly Restricted Data also should be required to read 42 U.S.C. 2274 through 2277 of the Atomic Energy Act of 1954. Extracts of these statutes may be locally produced with the assistance of the Staff Judge Advocate that services the command or activity.

Subpart M—Foreign Origin Material

§ 850.195 NATO, CENTO, and SEATO.

Within the Air Force the marking requirements are expanded in AFRs 205–43, 44 and 45.

§ 850.196 NATO, CENTO, and SEATO classified information.

See AFRs 205–43, 44, and 45 for detailed Air Force implementation.

§ 850.197 Classified material of foreign origin.

See § 850.44 for special rules on classification marking for subjects and titles.

Subpart N—Special Access Programs

§ 850.198 Future programs.

Requests for approval are submitted through command channels and HQ USAF/SPIB.

Subpart O—Program Management

§ 850.199 Military Departments, Air Force classification review committee.

The senior official responsible for the Air Force Information Security Program is The Chief of Security Police.

§ 850.200 Committee membership.

Members of the Air Force Classification Review Committee (AFCRC) are: The Chief of Security Police (Chairman), a representative of the Administrative Assistant to the Secretary of the Air Force, The Judge Advocate General, and the Director of Information.

§ 850.201 Functions of the Committee.

The AFCRC considers and decides upon complaints, suggestions, or appeals concerning classification or declassification matters that cannot be resolved successfully through normal staff action.

(a) It also reviews appeals brought under the Freedom of Information Act (Part 806) when a denial of a request for records is based on continued classification. The decision of the Committee will be forwarded as a recommendation to SAFAA, who has the final decision making authority for these appeals.

(b) In exceptional cases, the AFCRC recommends administrative action to the Secretary of the Air Force to correct an abuse or violation of Executive Order 11652 or DOD 5290.1–R.

§ 850.202 Matters to be referred to the Committee.

The AFCRC is in essence an appeal review board that deals with exceptional instances in which departmental classification decisions are being contested and is therefore concerned only with appeals that originate outside the Air Force.

(a) Differences of view concerning classification that arise between various Air Force elements are resolved through normal staff and command channels.

(b) Administrative action to correct abuse or violation of Executive Order 11652 or DOD 5200.1–R is generally taken by appropriate command echelon and is therefore not referred to the AFCRC. The AFCRC recommends administrative action only when the need becomes apparent as a result of the AFCRC's own review of an appeal action, or in exceptional circumstances when the Secretary of the Air Force or the Chairman of the AFCRC considers special review and recommendations to be necessary.

§ 850.203 Manner of referral to the committee.

Any Air Force activity that receives a formal request for review of a departmental classification decision by the AFCRC, forwards the request, with all pertinent papers, to HQ USAF/SP. HQ/USAF/SP reviews the matter against basic classification policies, coordinates as necessary through normal Air Staff procedures, and if possible resolves the matter without referral to the AFCRC. If the matter cannot be resolved to the satisfaction of the appealing party and review by the AFCRC is still desired, HQ USAF/SP advises the Chairman of the AFCRC that a decision by the committee will be necessary. The Chairman of the AFCRC schedules a meeting of the committee and advises other committee members.

§ 850.204 Conduct of committee meetings.

HQ USAF/SP performs executive secretary functions in support of the AFCRC and presents to the committee the issue to be resolved, the points of difference, the classification policies pertinent to these points and HQ USAF views developed during preliminary staffing.

(a) If necessary, HQ USAF/SP arranges for representatives of appropriate HQ USAF offices to be present to assure proper representation of one or more HQ USAF offices or to permit interpretation of specialized information.

(b) Decision of the AFCRC is by majority vote of the members of the committee. If a majority vote is not reached, the matter is referred, through the Air Force Chief of Staff to Secretary of the Air Force for decision.

(c) HQ USAF/SP maintains records of all AFCRC meetings and provides copies of these records to each committee member and to other elements of the Air Force directly concerned.

§ 850.205 Program monitorship.

The Inspector General exercises his inspection responsibilities under this part through the Deputy Inspector General for Inspection and Safety. Inspection reports are processed as prescribed in the 123 series of Air Force directives. All other facets of program monitorship are exercised through The Chief of Security Police, HQ USAF.

§ 850.206 Field program management.

The senior Security Police official at each command or installation is designated security manager for those activities he services. Separate security managers may be designated when separate commands are represented on an installation. Commanders at activities not having a security police unit will appoint a security manager. The security manager will:

(a) Insure that security managers are appointed by each unit/staff agency he services.

(b) Manage the overall installation and headquarters information security program and provide technical guidance and assistance to unit and staff agency security managers.

(c) Conduct quarterly security managers meetings. Prepare and distribute minutes of the meetings to all unit and staff agency security managers for use in their security programs.

§ 850.207 Security manager program.

Unit staff agency security managers will insure implementation of and compliance with the DOD Information Security Program within the activity to include:

(a) Providing advice and assistance to the commander and personnel assigned to the organization.

(b) Insuring development and implementation of internal operating instructions where required.

(c) Insuring compliance with the security education requirements of Subpart K.

(d) Monitoring the internal semiannual security inspection program to insure that the inspections are of sufficient scope and depth to identify deficiencies and accurately evaluate the status of security and to insure appropriate corrective actions.

§ 850.208 Command level monitorship.

At command levels below HQ USAF, Inspectors General, when assigned, perform inspection functions to assure compliance with this directive, and report results in the manner prescribed by the 123 series of Air Force directives. All other program management and monitorship

functions are assigned to the Security Police activity.

§ 850.209 Semiannual security inspections.

In addition to the inspections conducted by Inspectors General, unit commanders and chiefs of major staff offices inspect their activities at least twice each year.

(a) These inspections include security procedures such as classification, dissemination, transmission, accountability and control, storage, review for downgrading and declassification, destruction of classified matter, and security education and orientation. The inspection of each element of the security program may be made on the basis of a representative sampling, but must be extensive enough to reflect the effectiveness and correctness of security procedures and to assure compliance with this regulation.

(b) The person conducting the inspection furnishes a written report of his findings to the commander or office chief concerned. The commander or office chief reviews the report to determine the adequacy of the inspection and to identify corrective action required. The inspection report is retained for review by inspectors and security managers and disposed of according to AFM 12–50.

§ 850.210 Reporting requirements.

(a) General. The reporting requirements formerly prescribed under RCS: DD–A(Q) 1183 have been canceled and replaced by the following reports, which are consolidated and submitted quarterly, the information to be current as of the 15th day of March, June, September and December:

(1) Report of Authorized Classifiers, RCS: 1226–GSA–QU–T;

(2) Report of Classification Abuses, RCS: 1223–GSA–QU–T;

(3) Report of Unauthorized Disclosures, RCS: 1224–GSA–QU–T;

(b) (Added) Reporting Deadlines. Major commands report by message or letter to reach HQ USAF/SPIB no later than 15 calendar days following the end of the reporting period.

(1) The Strategic Air Command (SAC) reports for HQ SAC directly to the Deputy Assistant Secretary of Defense (Security Policy) as prescribed in the DOD ISPR, para 1–601. SAC reports for all subordinate headquarters and field units to HQ USAF/SPIB.

(2) Major HQ USAF offices report to the 1143d Air Base Squadron/SP no later than 10 calendar days following the end of the reporting period. The 1143d ABS/SP submits a consolidated report for HQ USAF and OSAF to reach HQ USAF/SPIB no later than 15 calendar days following the end of the reporting period.

(3) Negative reports are not required.

(c) (Added) Report of Authorized Classifiers, RCS: 1226–GSA–QU–T. Report each change in the designation of any Confidential classification authority. Original Top Secret and Secret classification authorities require approval on an individual basis at departmental level and therefore are not reported; however, any change that does not require this approval (such as deletions or unit designation changes) must be reported.

(d) (Added) Report of Classification Abuses. RCS: 1223–GSA–QU–T.

(1) The term "classification abuse" means an unnecessary classification, an over or under classification, a failure to assign the proper downgrading and declassification schedule, an improper application of classification markings, an improper placing of a document in an exempt declassification category, any classification or exemption action taken without proper authority, or an improper delegation of classification authority.

(2) A reportable abuse shall mean any of the actions described above except those that result entirely from a judgment decision where the principles set forth in paras 2–300 and 3–100 of the DOD ISPR were fully considered and it is reasonable to assume that a good faith basis for the action taken existed. A reportable abuse shall be grounds for administrative action as provided in paragraph 14–101a, DOD ISPR 5200.1–R. Reports of abuses shall include the following:

(a) Date, organizational unit and location.

(b) Details of the abuse (for example, improper use of exemption authority or unauthorized use of such authority, together with the circumstances surrounding the case).

(c) Corrective measures taken to prevent recurrence, to include any administrative action taken against the individual involved.

(e) (Added) Report of Unauthorized Disclosures, RCS: 1224–GSA–QU–T. Reportable unauthorized disclosures are those cases which involve the release and disclosure of classified information, either deliberate or inadvertent, as contrasted to physical security violations such as an unattended, open security container or the confirmed loss of control of a classified document.

(1) The principle criteria for determining whether a disclosure is reportable include:

(a) The release and disclosure are of sufficient importance to warrant formal investigation; and

(b) The formal investigation establishes that an important disclosure of classified information did, in fact, occur.

(2) Unauthorized disclosure reports will include the following:

(a) Date of the incident, if known.

(b) Subject and security classification of the disclosed information. Indicate whether the disclosed information can be declassified.

(c) Identity of the document disclosing the information or material, if known.

(d) Identity of the publication (public press, technical journal, report), speech or briefing containing the disclosed information or the unauthorized recipient of the classified information.

(e) The reporting activity's evaluation of the impact of the disclosure on national security.

(f) Indicate whether the unauthorized disclosure has been referred to the Department of Justice for prosecution. In lieu of recommended legal action, indicate other action taken or pending.

(g) Where appropriate, state action planned or taken to prevent recurrence.

(h) Forward additional sheets or exhibits by mail as necessary.

Subpart P—Classification Management

§ 850.211 General.

Unnecessary classification impedes operations and raises costs. Failure to classify information which should be protected jeopardizes military operations. Inconsistent classification serves neither economy nor operational security, and creates confusion. Therefore, it is essential that classification matters be properly coordinated and managed at all echelons.

§ 850.212 HQ USAF.

The chief of each office at directorate or comparable level:

(a) Issues classification guidance for programs, plans, and operations over which he has primary functional responsibility;

(b) Establishes procedures to assure that classification guidance issued by his activity is properly coordinated with other elements of the Air Staff;

(c) Within his functional responsibility, determines the classification, downgrading, or declassification of information referred to him for review; and

(d) Establishes procedures to assure that information originated within his activity is downgraded and declassified as promptly as circumstances permit.

§ 850.213 Major commands.

The Director/Chief of Security Police is responsible for:

(a) Conducting an effective classification management program encompassing classification matters dealt with in the DOD ISPR;

(b) Issuing classification guidance for programs, plans, and operations for which he has responsibility;

(c) Establishing procedures to assure that each classification guide (or other classification guidance) transmitted outside the command is coordinated with the Office of Information and approved by or coordinated with the designated classification management activity; and

(d) Establishing procedures to assure that information originated within the command is downgraded and declassified as promptly as circumstances permit.

Subpart Q—Administrative and Judicial Action

§ 850.214 Applicability.

The provisions of Chapter 14 of the DOD ISPR concerning individual responsibility, administrative actions, and judicial action apply to this part.

Subpart R—Instructions Governing Use of Code Words, Nicknames and Exercise Terms

§ 850.215 General.

Within the Air Force HQ USAF/DAAW establishes procedures for the conduct and management of the Air Force Code Word, Nickname, and Exercise Term Program. At major command and separate operating agency level, responsibility for the effective management and control of the program is that of the command document security activity, which is hereby designated as the central point for control and assignment of code words, nicknames and exercise terms within the command. Hereafter, the phrase "central control point" when used, will apply to the command document security activity.

§ 850.216 Policy and procedure, code words.

HQ USAF/DAAW obtains blocks of code words from JCS (J–3), and reallocates these code words within the Air Force. The central control point obtains code words for command use from HQ USAF/DAAW. For joint plans and operations developed under the jurisdiction of a unified commander, and for plans and operations of a specified command, these commanders are authorized to obtain code words direct from JCS (J–3) and to assign meanings to such code words.

§ 850.217 Policy and procedure, code words, accountability.

The command central control point is accountable for allocating code words and for maintaining records of the status of each code word allocated. At HQ USAF level, these administrative responsibilities are assumed by HQ USAF/DAAW. When code words are cancelled, destroy the records in accordance with AFM 12–50.

§ 850.218 Policy and procedure, nicknames, nickname assignments.

The USAF nickname assignment concept is one nickname per project. Once a nickname is assigned, it remains as the project nickname throughout its life cycle, until its cancellation or termination. Commands or agencies participating in various phases of the project should not assign new nicknames. (Nicknames assigned before June 1, 1971 need not be cancelled solely to comply with the single name concept.)

(a) Each major user of nicknames is assigned a permanent first word, as shown in the list which follows, for use within the command or activity. These "first words" are permanently assigned to the Air Force and were derived from an allocation of letter combinations issued to the Air Force by JCS. Such allocation consists of the following letter combinations: cm through cr, ha through hf, lm through lr, pa through pf, rg through rl, and sa through sf. For CINC SAC, a specified command, the following letter combinations have been allocated by JCS: BS through BZ, GG through GL, KS through KZ, OG through OL, and YM through YR.

NICKNAME ASSIGNMENTS

Permanent 1st word	*Assigned to*
Cobra	HQ USAF/IN
Coin	HQ USAF/LGT
Cold	MAC
College	ADC
Colony	HQ USAF/RE
Columbine	AF AFC
Combat	HQ USAF/XOO
Comet	HQ USAF/RDSC
Comfort	AFRES
Comfy	USAFSS
Commando	PACAF
Compass	HQ USAF/RDR
Concrete	HQ USAF/PRE
Constant	HQ USAF/XOO
Contract	HQ USAF/LGX
Control	HQ USAF/IG
Cool	AAC
Copper	HQ USAF/LGP
Corona	HQ USAF/CC
Coronet	TAC
Council	HQ USAF/NB
Credible	HQ USAF/XO
Creek	USAFE
Crested	HQ USAF/PRP
Crew	AFTAC
Cross	ARPC
Hammer	AFCS
Harvest	HQ USAF/LG
Hasty	ATC
Have	AFSC
Head	HQ COMD USAF
Heavy	HQ USAF/XOX
Look	AFISC
Loyal	AU
Pacer	AFLC
Palace	HQ USAF/DP
Panel	HQ USAF/PRM
Paper	HQ USAF/DA
Pardon	HQ USAF/JA
Patch	HQ USAF/SG
Pave	HQ USAF/RDP
Peace	HQ USAF/LGF
Penny	HQ USAF/AC
Rhythm	HQ USAF/XOD
Ritzy	SAF/AA
Rivet	HQ USAF/LGM
Saber	HQ USAF/SA
Sacred	HQ USAF/HC
Safe	HQ USAF/SP
Savage	USAFSO
Scenic	USAFA
Science	HQ USAF/RD
Scope	HQ USAF/PRC
Scout	HQ USAF/PRW
Scrappy	HQ USAF/PR
Search	HQ USAF/RDG
Season	HQ USAF/RDM
Secure	AFISC/SN
Seek	HQ USAF/RDQ
Senior	HQ USAF/IGJ
Sentinel	HQ USAF/IN
Sentry	NGB/XO
Service	HQ USAF/LGS
Seven	AFOSI

(b) The second word of a nickname is selected at random, but the central control point must insure that it does not conflict with DOD ISPR 5200.1–R, Appendix D, para 2b.

(c) Forward the original and first carbon copy of AF Form 608, Nickname Assignment/Change/Cancellation Request, to the 1143 ABS/DAD, Wash DC 20330, to report the assignment, change, cancellation of a nickname and report the transfer of responsibility for a project to which a nickname has been assigned. (Specific instructions for completion are contained on the form.)

(d) A nickname is not approved for reuse for a minimum of 2 years after its cancellation. If, however, a program is cancelled or completed, and is later reactivated, the responsible agency may reactivate the original nickname and assign a roman numeral suffix, if desired, indicating the recurring use of the nickname for an identical or related program.

(e) Inquiries about the meaning of a nickname should be directed to the office or unit responsible for the program or project. This can be determined by comparing the first word of the nickname with the major user indicated in 1 above or refer to AFP 11–6, Nicknames, for a list of Air Force-assigned nicknames, their unclassified meanings, and the organization and action office to which assigned.

(f) A compilation of nicknames and meanings is unclassified. Take special care to ensure that using activities do not violate the intent of the use of nicknames.

§ 850.219 Policy and procedure, exercise terms.

Classified exercise terms will only be issued by HQ USAF/DAAW upon request by the using activity.

§ 850.220 Policy and procedure, exercise terms, exercise terms assignments.

Procedures governing the selection, assignment, and reporting of exercise terms are identical to those established for nicknames. However, when reporting an exercise term on AF Form 608, enter the phrase "This is an exercise term" in block #10. Permanently assigned first words for exercise terms allocated to the Air Force follow. HQ USAF offices and other activities not listed are assigned a permanent first word by HQ USAF/DAAW on written request.

EXERCISE TERM ASSIGNMENTS

Permanent 1st word	*Assigned to*
Cobbler	AAC
Collect	ADC
Happy	AFAA
Half	AFAFC
Healthy	AFCS
Hectic	AFDAA
Long	AFIS
Loose	AFISC
Loud	AFLC
Painted	AFMPC
Pale	AFOSI
Paid	AFRES
Paradise	AFSC
Path	AFTEC
Right	ARPC
Ripe	ATC
Rich	AU
Cope	CINCPACAF
Salty	CINCUSAFE
School	HQ COMD USAF
Scarlet	MAC
Sea	TAC
Semester	USAFA
Sensible	USAFSO
Sensitive	USAFSS

§ 850.221 Assignment of classified meanings to code words.

(a) The Chief of Staff, USAF, and each major command is authorized to

approve the use of a code word and to assign a meaning. All agencies not allocated a block of code words forward requests for assignment of a meaning to 1143 ABS/DAD.

(b) Requests for the assignment of a meaning to a code word or any change in status of code words or meanings are forwarded to the authority designated in § 850.216 above, and include as required:

(1) (Added) The meaning, its security classification, and coordinates in the case of geographical locations. The meaning indicates the nature of the specific plan, operation, or location to which it applies, and, so far as practical, is limited to that information.

(2) (Added) Security classification to be assigned to the code word.

(3) (Added) Dissemination to be made of code word and meaning.

(4) (Added) Desired effective date of assignment, change, or cancellation.

(c) The meaning designated for one active code word is not assigned to any other code word.

§ 850.222 Notice of assignment, dissemination, and cancellation of code words and meanings.

(a) This notification is accomplished by 1143 ABS/DAD.

(b) The authority which assigns, changes, or cancels a code word/meaning promptly notifies 1143 ABS/DAD and includes information required by § 850.221(b) above.

§ 850.223 Classification and downgrading instructions.

Do not use a cancelled code word to refer to the meaning originally assigned to it. After receiving notice that the status of a code word has been changed to "cancelled", all activities promptly discontinue use of the word.

§ 850.224 Security practices.

All personnel with knowledge of code words or their meanings must be informed of security practices pertaining to code words. During any discussion involving the details of a plan or operation which reveal a classified meaning, avoid the use of the related code word unless all persons within hearing also require it. If a code word is used during any discussion, avoid any reference to the related meaning unless all persons within hearing must know it.

Subpart S—Component Implementations of DOD Issuances

§ 850.225 Corrections.

(a) AFR 205–32 is Air Force implementation of DOD 5210.8.

(b) S 5200.17 (M–2) is DIA implementation of DOD S 5200.17.

(c) USAFINTEL'S 201–1, 201–2 201–6, 201–7 and 201–10 are Air Force implementation of DOD S 5200.17 (also see AFR 8–3).

By order of the Secretary of the Air Force.

JAMES L. ELMER,
Major, USAF Executive,
Directorate of Administration.

[FR Doc.76–18768 Filed 6–29–76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 540–2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Revision to Maryland State Implementation Plan

During November and December 1973, the Administrator promulgated Transportation Control Plans for Air Quality Control Regions (AQCR's) in which the National Ambient Air Quality Standards for carbon monoxide and photochemical oxidants were being violated. For those AQCR's violating the photochemical oxidant standards, the Administrator promulgated vapor recovery regulations to control the evaporation of hydrocarbons resulting from gasoline transfer operations. On December 6, 1973 (38 FR 33702) and December 12, 1973 (38 FR 34240), the Administrator promulgated Stage I vapor recovery regulations for the Maryland portion of the National Capital AQCR and the Metropolitan Baltimore AQCR respectively. The main provision of the Stage I regulation was the recovery of 90 percent of hydrocarbon vapors on all gasoline storage tanks greater than 250 gallons with three exceptions:

1. Stationary containers with a capacity of less than 550 gallons and used exclusively for the fueling of implements of husbandry.

2. Any container with a capacity less than 2,000 gallons installed prior to the promulgation.

3. Gasoline transfers from storage tanks equipped with floating roofs or their equivalent.

On April 24, 1974, the State of Maryland submitted to EPA amendments to Section .04J of Maryland Regulations 10.03.38 and 10.03.39, and requested that the amendments be incorporated into the Maryland State Implementation Plan (SIP) for the attainment and maintenance of national ambient air quality standards. At the same time, the State requested that the EPA-promulgated regulations (40 CFR 52.1086 and 52.1101) be withdrawn.

The amendments submitted by the State pertain to Maryland Regulations 10.03.38–39.04J(2)(e) (1) and (2), covering gasoline handling vapor control (vapor recovery Stage I). The regulations require Stage I vapor recovery equipment to be installed on all tanks with an average monthly throughput greater than 20,000 gallons based on a twelve month average. Along with the submittal of April 24, 1974, the State provided proof that public hearings were held, as set forth in 40 CFR 51.4.

On August 29, 1974, (39 FR 31533), the Administrator acknowledged receipt of the amendments, proposed them as a revision to the Maryland SIP, and provided for a 30 day public comment period. Because of an error that was published in the August 29, 1974, FEDERAL REGISTER notice, a correction notice was published on October 1, 1974, (39 FR 35386) which extended the comment period for an additional 30 days. During the comment period ending October 31, 1974, the Administrator received comments from the Maryland State Department of Agriculture; Honorable C. A. Porter Hopkins, Maryland House of Delegates; Crown Central Petroleum; Maryland Oil Jobbers Council; Maryland Farm Bureau, Inc.; and the State Bureau of Air Quality Control. All of the above comments supported the proposed State Implementation Plan revision.

It has been determined that the amended state regulations for facilities dispensing more than 20,000 gallons/month meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans, even though the compliance date for facilities between 20,000 and 50,000 gallons/month varies from the Federal regulation. The 20,000 gallons/month exemption threshold in the proposed state regulation, however, varies significantly from the regulations promulgated by EPA for the State of Maryland (40 CFR 52.1086 and 52.1101).

Upon review of these issues, the Administrator has determined that:

1. In light of the initiative demonstrated by the State of Maryland in developing regulations for oxidant control, and recognizing the desirability of state enforcement, the Federal compliance date (March 1, 1976, as extended to December 1, 1976, by Region III) may be further extended to May 31, 1977, as proposed by the State of Maryland, without detriment to the long term effectiveness of this program. This compliance date extension also recognizes the unavoidable delays incurred as facilities subject to this regulation awaited resolution of these conflicting State and Federal requirements. This extension, however, should not be construed as altering the basic compliance dates set forth for other areas covered by Federally promulgated Stage I programs.

2. For those facilities excluded by the State of Maryland, i.e., facilities dispensing fewer than 20,000 gallons/month, the Federal Stage I regulation will remain applicable so as to avoid both a decrease in program effectiveness and the creation of economic inequities in comparison with similar facilities in other states subject to the Federal Stage I regulation. However, for these facilities, the required Federal compliance date of December 1, 1976 (as extended by Region III) will be further extended by Region III to May 31, 1977, to avoid requiring smaller facilities to meet an earlier compliance date than that required of larger facilities.

In light of the above evaluation, the Administrator hereby approves the revised Maryland regulations 10.03.38.04J (2)(e3)1) and (2)(e)(2) and 10.03.39.04J (2)(e)(1) and (2)(e)(2) as a revision to (2(e)(1) and (2)(e)(2) as a revision to the Maryland SIP for facilities having a throughput equal to or greater than 20,000 gallons/month. At the same time 40 CFR 52.1086 and 52.1101 remain in

force with regard to facilities below 20,000 gallons/month.

Effective date: Inasmuch as some of the dates for final compliance under the EPA regulations are rapidly approaching, and as the concurrent applicability of different State and Federal regulations in the State of Maryland may have resulted in confusion for facilities subject to them, the Administrator has determined that the revision to the Maryland SIP is effective June 30, 1976.

Copies of the revision, and the analysis on which it is based, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Curtis Building, Second Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. Attn: Mr. Harold Frankford.

Maryland Bureau of Air Quality Control, 201 West Preston Street, Second Floor, Baltimore, Maryland 20201. Attn: Mr. Edward Carter.

Public Information Reference Unit (PM-213), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

(Secs. 110, 301, Clean Air Act, as amended (42 U.S.C. 1857c-5, 1857g).)

Dated: June 25, 1976.

RUSSELL E. TRAIN,
Administrator.

Subpart V, Part 52 of Chapter I, Title 40 of The Code of Federal Regulations is amended as follows:

Subpart V—Maryland

1. In § 52.1070 paragraph (c) is amended by redesignating paragraphs (c)(13) and (c)(14) to now read (c)(14) and (c)(15), respectively. Paragraphs (c)(13) and (c)(16) are added as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(13) Amendment to Maryland regulations 10.03.38.04J and 10.03.39.04J covering gasoline handling vapor control submitted on April 24, 1974, by the Governor of Maryland.

* * * * *

(16) Revisions to regulations 10.03.38.-04J and 10.03.39.04J submitted on July 1, 1975.

2. In § 52.1073, paragraphs (b) and (d) are revised to read as follows:

§ 52.1073 Approval status.

* * * * *

(b) With respect to the transportation control strategies submitted on April 16, May 5, June 15, June 22, June 28, July 9, 1973, and July 1, 1975, the Administrator approves the measures for the National Capital region for car pool locator, express bus lanes, increased bus fleet and service, elimination of free on-street commuter parking, elimination of free employee parking, parking surcharge, dry cleaning solvent use, and gasoline vapor recovery with the exceptions set forth in §§ 52.1074, 52.1077, 52.1080, 52.1081, 52.1082, 52.1084, and 52.1086.

* * * * *

(d) With respect to the transportation control strategies submitted on April 16, June 15, June 28, July 9, 1973 and July 1, 1975, the Administrator approves the measures for the Metropolitan Baltimore Intrastate Region for carpool locator, dry cleaning solvent use, gasoline vapor recovery, emission "freeze" by limiting construction of new sources, increased bus fleet size, and traffic flow improvements with the exceptions set forth in §§ 52.1074, 52. 1077, 52.1080, 52.-1081, 52.1082, and 52.1101.

* * * * *

3. In § 52.1081, paragraph (d), the third sentence is revised to read as follows:

§ 52.1081 Control strategy: Carbon monoxide and photochemical oxidants (hydrocarbons).

* * * * *

(d) * * * The requirements of § 51.-14(c) of this chapter are also not met with respect to gasoline vapor controls to the extent that Maryland proposes to exempt stations with a throughput of less than 20,000 gallons/month. * * *

* * * * *

4. In § 52.1086, paragraph (d) is amended by adding a new paragraph (d)(4), to read as follows:

§ 52.1086 Gasoline transfer vapor control.

* * * * *

(4) Any stationary container at any facility where the monthly average throughput (1½ of the total throughput for the preceeding twelve months) exceeds 20,000 gallons per month and which is subject to Maryland regulation 10.03.39.04J(2)(e)(1) and (2).

* * * * *

5. In § 52.1101, paragraph (d) is amended by adding a new paragraph (d)(4), reading as follows:

§ 52.1101 Gasoline transfer vapor control.

* * * * *

(4) Any stationary container at any facility where the monthly average throughput (1½ of the total throughput for the preceding twelve months) exceeds 20,000 gallons per month and which is subject to Maryland regulation 10.03.38.04J(2)(e)(1) and (2).

* * * * *

6. In § 52.1086, paragraphs (e)(5) and (h) are revised to read as follows:

§ 52.1086 Gasoline transfer vapor control.

* * * * *

(e) * * *

(5) May 31, 1977. Assure final compliance with the provisions of paragraph (c) of this section.

* * * * *

(h) Any gasoline dispensing facility subject to this section which installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by May 31, 1977, and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section which installs a storage tank after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

7. In § 52.1101, paragraphs (e)(5) and (h) are revised to read as follows:

§ 52.1101 Gasoline transfer vapor control.

* * * * *

(e) * * *

(5) May 31, 1977. Assure final compliance with the provisions of paragraph (c) of this section.

* * * * *

(h) Any gasoline dispensing facility subject to this section which installs a storage tank after the effective date of this section shall comply with the requirements of paragraph (c) of this section by May 31, 1977, and prior to that date shall comply with paragraph (e) of this section as far as possible. Any facility subject to this section which installs a storage tank after May 31, 1977, shall comply with the requirements of paragraph (c) of this section at the time of installation.

[FR Doc.76-19014 Filed 6-29-76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 4—DEPARTMENT OF AGRICULTURE

PROCUREMENT

Miscellaneous Amendments

This amendment involves matters relating to agency procurement and contracting and, while not subject by law to the notice and public procedure requirements for rule making under 5 USC 553, is subject to the Secretary's Statement of Policy (36 FR 13804). The amendment corrects or clarifies existing policy. No useful purpose would be served by public participation, and it is found upon good cause, in accordance with the Secretary's Policy Statement, that notice and other public procedures with respect to the amendment are impracticable and unnecessary.

1. In 41 CFR Chapter 4, the Table of Contents of Part 4–5 is amended by deleting the following sections:

Sec.

4–5.5002 Contracting for Agricultural Research Center, Beltsville, facilities.

* * * * *

4–5.5303–4 Federal Supply Schedule checklist and guide.

2. Subpart 4–5.50—Agricultural Research Center, is amended as follows:

§ 4–5.5001 [Amended]

a. Section 4–5.5001 is amended by changing reference "5 U.S.C. 542–2" to read "7 U.S.C. 2236."

§ 4–5.5002 [Deleted]

b. Section 4–5.5002 *Contracting for Agricultural Research Center, Beltsville, facilities,* is deleted.

3. Subpart 4–5.53—General Services Administration, is amended as follows:

a. Sections 4–5.5301–1, 4–5.5301–2, 4–5.5301–3, 4–5.5301–8, 4–5.5303–1, 4–5.5303–2, 4–5.5303–3, 4–5.5303–5, 4–5.5303–7, 4–5.5303–8, and 4–5.5304 are revised and 4–5.5302 is deleted and reserved to read as follows:

§ 4–5.5301 Stores depots.

§ 4–5.5301–1 General.

The Federal Supply Service, General Services Administration, maintains stocks of numerous items of materials and supplies at its various stores stock depots throughout the United States.

§ 4–5.5301–2 Ordering stores stock.

(a) The GSA Supply Catalog lists the items stocked by the various stores stock depots throughout the United States. Instructions for ordering from Stores Depots are contained in this catalog. Orders must be submitted according to the Federal Standard Requisitioning and Issuing Procedures (FEDSTRIP) as found in the FEDSTRIP Operating Guide, 41 CFR 101–26.2 and the USDA National Finance Center Operating Procedures Handbook, NFC FEDSTRIP System. All FEDSTRIP orders submitted by units of the Department of Agriculture must be on Form AD–633, Multiuse Standard Requisitioning/Issue Statement. AD–633 shall be submitted only to the USDA National Finance Center for transmittal to GSA—the Form should never be submitted directly to GSA.

(b) Copies of the GSA Stock Catalog may be obtained from the Printing and Distribution Branch, Federal Supply Service, General Services Administration, Washington, D.C. 20405. Agencies may also receive copies by being placed on the GSA distribution list. See § 4–5.5303–5 for mailing list procedures.

§ 4–5.5301–3 Utilization of GSA Stores Depot Stocks.

All executive agencies within the United States (including Hawaii and Alaska) shall requisition their requirements of stock items listed in the GSA Supply Catalog and supplements thereto, exclusively from the stores stock of GSA, except as provided below. The exceptions of this section are not applicable to standard and optional forms. Exceptions are as follows:

(a) When suitable Government-owned used, excess, or surplus property can be secured;

(b) When the total value of the line item requirement is less than $10;

(c) When the items are required under public exigency, when time or circumstances do not permit obtaining the item from GSA;

(d) When the items must be procured by small local purchases at the site of work or point of need to satisfy day-to-day requirements that cannot be foreseen. Quantities must not exceed immediate needs. Imprest funds, Form AD–744 (Purchase Order/Invoice/Voucher), or Blanket Purchase Arrangements are available for use;

(e) Marginally punched stock forms not available in the GSA stock system must be purchased under GPO contract in accordance with § 101–26.703. Marginally punched custom forms should be ordered by submitting form AD–78 to the Office of Communication, Printing Branch. Marginally punched Standard Forms must be obtained from GSA in accordance with § 101–26.302;

(f) Blank paper and envelopes must be purchased under the catalog for Blank Paper and Envelopes, Inks, Glues, Miscellaneous Supplies and Services, issued by GPO for the District of Columbia.

(g) When items are available under Federal Supply Service contracts;

(h) When products and services are listed in the Procurement List of the Committee for Purchase from the Blind and Other Severely Handicapped and are not stocked by GSA;

(i) When items are listed in the Schedule of Products Made in Federal Penal and Correctional Institutions and are not stocked by GSA;

(j) When items available from GSA will not adequately serve the required functional purpose, similar items may be purchased after obtaining a waiver from GSA in accordance with sections 101–26.301–1 of this title and § 104–26.301–1 of the Agriculture Property Management Regulations; and

(k) as may be otherwise specifically authorized.

§ 4–5.5301–8 Requests for stocking of additional items by GSA stores depots.

Requests for the inclusion of new items in GSA stock should be forwarded, in duplicate, through appropriate channels, to the Director, Office of Operations, for review and submission to the Federal Supply Service. Estimated annual requirements, as well as other available information which may be useful in considering the proposal should be included.

§ 4–5.5302 [Reserved]

§ 4–5.5303–1 General.

Federal Supply Schedules are listings of articles and services available under contracts entered into by General Services Administration. Schedules for some commodities require that orders be placed directly with the contractor. Certain non-stock commodities under the "Improved Federal Supply Schedules Program" are requisitioned from GSA but shipped directly from the contractor. Schedules are published in catalog style and list under major commodity classifications the articles and services available from the contractor named therein, the price, and the contract period. Each schedule contains contractual terms and conditions; such as, whether it is mandatory or optional, minimum and maximum order amounts, and all essential ordering information for placing orders directly with contractors. The term "primary source" on the schedules denotes that it is mandatory for the agencies indicated.

§ 4–5.5303–2 Use.

Where a Federal Supply Schedule is designated as the primary source, agencies shall use such schedule for procuring the property or services listed therein, subject only to such exemptions for emergency conditions, etc., as are provided in the schedule. Where the delivery period offered in the schedule does not meet the delivery requirements of the purchasing activity, use of the schedule is not mandatory. However, the delivery periods shown are based upon the average capabilities of the contractor and are usually conservative. Contractors, in most instances, are ab'e to make delivery within a shorter period of time than the maximum delivery provided in the schedule. Therefore, when delivery requirements are less than the maximum delivery shown in the schedule, inquiry should usually be made of the contractor as to whether or not the delivery requirements of the agency can be met. This procedure should be followed execept in those cases where transportation time from the contractor's shipping point or time required for inquiry and reply make it impracticable to do so. Failure to meet maximum Federal Supply Schedule delivery dates (or dates for faster delivery as agreed to by the contractors) will constitute a breach of contract and will be treated in accordance with § 101–26.403 of this title.

§ 4–5.5303–3 Non-mandatory schedules.

Agencies are encouraged to utilize nonmandatory schedule contracts except where the procuring activity has actual knowledge that purchase can be made more advantageously from some other source. The schedule may be presumed to be advantageous in the absence of special circumstances indicating the advisability of advertising or further price inquiry. Where a procurement from a source of supply other than a Federal Supply Schedule indicates that such source might be more advantageous to the Government, the name and address of the supplier together with other details of the procurement action should be forwarded to the Director, Office of Operations, for transmittal to the General Services Administration for consideration in connection with future schedule contracts.

§ 4–5.5303–5 Distribution of Federal Supply Schedules and contractors' catalogs.

Agency offices desiring to receive current copies and to be placed on distribution lists for receiving Federal Supply Schedules and contractors' catalogs should prepare and submit GSA Form 457, FSS Publications Mailing List Application, to General Services Administration, Centralized Mailing List Services, Building 41, Denver Federal Center, Denver, Colorado 80225. Copies of GSA Form 457 may also be obtained from the above address.

§ 4–5.5303–7 Recommendations for inclusion of additional items or other improvements in the Federal Supply Schedules.

Such recommendations should be forwarded through appropriate agency channels to the Director, Office of Operations, for review and submission to the Federal Supply Service. In the case of proposed new items, estimated annual requirements and other available information which may be useful in consideration of the proposal should be submitted.

§ 4–5.5303–8 Use of Federal Supply Schedule contracts by Government contractors.

Where an agency of the Department administering a cost-reimbursement type contract deems it to be in the best interest of the Government to do so, such agency may authorize the prime contractor to purchase available items needed to carry out the contract from Federal Supply Schedule contractors, in accordance with the limitations and procedures set forth in Subpart 1–5.9 of this title. Agencies may authorize any contractor or subcontractor to purchase security cabinets if the contract is required to maintain custody of security classified records and information under any kind of contract or subcontract (See § 101–26.407).

§ 4–5.5304 Mechanical shops.

Mechanical work desired by the various agencies of this Department in Washington, D.C., such as carpenter, cabinet, pattern, machine shop, plumbing, pipe fitting, sheet metal, electrical, composition, fabric, and leather work, model making, painting, manufacture and repair of awnings, and mechanical supplies and equipment may be obtained on a reimbursable basis from the mechanical shops under the supervision of the Public Buildings Service, General Services Administration. Requests should be prepared on GSA Form 2957, Reimbursable Work Authorization. The construction of office furniture or other equipment by the mechanical shops will not be permitted when standard articles available from commercial sources at less cost will serve the requirements.

§ 4–5.303–4 [Deleted]

b. Section 4–5.5303–4 is deleted.

4. Subpart 4–5.54—Government Printing Office, is amended as follows:

a. Sections 4–5.5401, 4–5.5401–1, 4–5.5401–5, 4–5.5402–2, 4–5.5402–3, and 4–5.5403 are revised to read as follows:

§ 4–5.5401 Printing and binding items.

Federal printing. All Federal field printing shall be procured through a Government Printing Office Regional Procurement Office by use of Standard Form 1, Printing and Binding Requisition, in accordance with those procedures outlined in the Agency Procedural Handbook for Commercial Procurement of Printing Services (GPO Publication P. 305.1) and the Government Printing and Binding Regulations published by the Joint Committee on Printing. All Federal departmental printing procured from the Government Printing Office, Washington, D.C., shall be obtained through the Office of Communication by use of Form AD–78, Request for Printing and Binding.

§ 4–5.5401–1 Authority.

Under the provisions of the act of October 22, 1968 (44 U.S.C. 501), all Federal printing for agencies shall be done at the Government Printing Office or one of the Government Printing Office Regional Procurement Offices except classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere. However, the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 756) provides that the General Supply Fund of the General Services Administration shall be available for purchase from or through the Public Printer of standard forms or blank book work for stores depots issue. A blank book is any book requiring printing, binding, or ruling operations, for its manufacture, and the primary purpose of which is for writing, sketching, or making entries. Generally, it must have covers, however light, and be stitched by wire or thread to be considered a "book." (If the pages are merely held together with an adhesive, it is usually a "pad" and not a "book.") The Printing and Binding Regulations of the Joint Committee on Printing provide that standard forms approved by the Office of Management and Budget or the General Accounting Office shall be obtained from the General Services Administration, unless otherwise authorized by the Joint Committee on Printing. With the approval of the Joint Committee on Printing, the Public Printer may arrange for such printing, binding, and blank book work as he is not able or equipped to do at the Government Printing Office to be done elsewhere under contract. (44 U.S.C. 502.)

§ 4–5.5401–5 Supervision over Federal printing and binding.

Administrative supervision over all Federal printing and binding done in this Department rests with the Director, Office of Communication (See 3 AR 290).

§ 4–5.5402–2 Types available.

The various items available are those listed in the Catalog and Price List of the U.S. Government Printing Office, Washington, D.C., entitled, "Blank Paper and Envelopes, Inks, Glues, and Miscellaneous Supplies and Services." Agencies who wish to be placed on the GPO distribution list for the catalog should contact the Government Printing Office, Paper and Material Control Section, Washington, D.C. 20401.

§ 4–5.5402–3 Method of acquisition.

It is mandatory that all Federal agencies procure their requirements for items listed in the catalog from the Government Printing Office, except when items for field use can be purchased more economically elsewhere, taking into consideration costs of packing and transportation by GPO, or as otherwise provided for in this paragraph. If any of the items listed in the catalog are not stocked by the Central Supply Branch they may be purchased by placing an order on an agency purchase order form with the Public Printer, Government Printing Office, Washington, D.C. The Government Printing Office will deliver the items listed in the catalog to Department agencies in Washington, D.C., at the prices quoted. Items not listed in the Government Printing Office quarterly catalog do not require waivers from the GPO for procurement elsewhere. If delivery to field offices is desired, the Government Printing Office, upon request, will prepare the items for shipment and include in its billing a charge for packing. In such cases, a Government bill of lading may be furnished with the purchase order, or the Government Printing Office may be requested to arrange the transportation and include the cost in its billing. If purchases for field delivery are not to be made from the GPO, other mandatory sources of supply should not be overlooked.

§ 4–5.5403 Distribution of publications.

The Superintendent of Documents, Government Printing Office, maintains stocks of various publications for sale to Federal agencies and to the general public (44 U.S.C. 1702, 1705). Such publications may be acquired for Washington or field delivery by placing an order on an agency purchase order form to the Superintendent of Documents, Government Printing Office, Washington, D.C.

5. Subpart 4–5.57—Office of Operations, is amended as follows:

a. Sections 4–5.5701–1; through 4–5.5701–3, § 4–5 5701–4 (a) and (c), §§ 4–5.5701–5 and 4–5.5701–6 are revised to read as follows:

§ 4–5.5701 Central Supply Branch.

§ 4–5.5701–1 Authority.

As authorized in the Agriculture Appropriation Act for 1944 (7 U.S.C. 2235) the Central Supply Branch, Office of Operations, operates a central supply service for the purchase, storage, handling, issuance, packing, and shipping of supplies and equipment, which service shall be used to the fullest extent practicable in order to make unnecessary the separate maintenance of like services in agencies of the Department.

§ 4–5.5701–2 Delivery.

Agencies of the Department shall procure supplies, equipment, blank forms, or other materials needed for Washington, D.C., delivery from the Central Supply Branch to the extent such materials are carried in stock by that Branch. Field offices may order from the Central Supply Branch only envelopes, letterhead paper, USDA service emblems, and various forms, as specified in Form AD–640, Departmental Forms Catalog. Central Supply Branch will not ship store items supplies outside the Washington metro-

politan area, which includes Beltsville and Hyattsville, Maryland, and Rosslyn, Virginia. These items may be ordered through GSA, or commercially (See § 101–26.301).

§ 4–5.5701–3 Forms available.

There is included in the Departmental Forms Catalog a list of forms available to all agencies of the Department. The list includes Standard, Departmental, Optional and other miscellaneous common use forms. Most of the forms listed are stocked in the Central Supply Branch. All Optional forms and various Standard forms are not shipped outside the Washington, D.C. metropolitan area as specified in the Catalog. These forms must be requisitioned through GSA.

§ 4–5.5701–4 Ordering standard and AD forms.

The Central Supply Branch purchases, stocks, and issues Standard and AD forms and uses the Working Capital Fund to initially finance the cost of such operation. Agencies shall reimburse the Working Capital Fund for the cost of such forms as well as the handling cost. With the following exceptions, all agency requirements for Standard and AD forms shall be obtained from the Central Supply Branch:

(a) Tabulating cards, purchase orders and vouchers for transportation charges.

* * * * *

(c) Agencies may order AD forms directly from the Public Printer when it appears to be more economical, because of quantity, frequency of ordering, use is limited and stocking in the Central Supply store is not feasible, or other special circumstances. Orders for forms from the Public Printer must be submitted on a printing requisition (AD–78) to the Office of Communication for review and processing. A statement explaining the reasons why such an order would be more economical must be included with the requisition.

§ 4–5.5701–5 Method of acquisition.

Supplies and forms stocked by the Central Supply Branch shall be requisitioned on Form AD–14, Request for Supplies, Equipment, or Service. Detailed instructions for its use are on the reverse side of the form. Additional instructions are contained in the Central Supply Stock Catalog and the Departmental Forms Catalog.

§ 4–5.5701–6 Handling charges.

The Central Supply Branch operates under a working capital fund. The handling charge for store item supplies is based on a fixed percentage of Central Supply's operating costs, as related to the agency's volume of business. Separate estimates and percentages are developed to determine handling charges on printed forms, letterhead paper, envelopes, and USDA service emblems.

b. Section 4–5.5702 is revised to read as follows:

§ 4–5.5702 Departmental contracts.

The Office of Operations makes consolidated term contracts for services constantly in demand by the Department but not covered by Federal Supply Schedules or other term contracts. Agencies are notified of these contracts through supplements to Office of Operations' Memorandum No. 22.

c. Sections 4–5.5703–2 and 4–5.5703–5 are revised to read as follows:

§ 4–5.5703–2 Documentation.

Certain documentation is required from agencies submitting requisitions to the Office of Operations for procurement action. It includes but is not limited to:

(a) An original requisition and one copy signed by an authorized official of the agency. The requisition must cite appropriation authority, estimated dollar amount, description of supplies or services required, quantity required, date material or services are required and place of inspection of goods or services.

(b) Specifications reflecting the minimum needs of the agency (see §§ 1–1.305 and 4–1.305 of this title).

(c) A list of known or potential suppliers of the supplies or services (see §§ 1–1.302 and 4–1.302 of this title).

(d) If competition is to be limited to a single source, a statement to that effect together with appropriate justification is required.

(e) Justification for negotiation, if required (see Subpart 1–3.2 of this title).

(f) If for automated data processing equipment or services, a statement from the Office of Automated Data Systems that the specifications have been reviewed by their staff (see § 4–1.453 of this chapter).

§ 4–5.5703–5 Contract administration.

The successful completion of contracts awarded by the Office of Operations requires close cooperation and coordination between the Office of Operations and the agencies. After a contract is executed by the Office of Operations for an agency, the agency representatives have responsibility for close cooperation with the contracting officer in follow-up and expediting of performance and in inspection and testing of materials or services furnished. Those actions which are a responsibility of the contracting officer under the terms and conditions of the contract may not be performed by any other person, unless there is a written delegation by the contracting officer designating specific persons to act for him. These include the execution of such documents as change orders, extensions of contract time for performance, notices of default or termination of the contractor's right to proceed under the contract, findings of fact and decisions on questions of fact in dispute. Whenever such actions are required, the necessary documents should be prepared for signature of the contracting officer (or his designated representative) after such consultation with him as may be appropriate. The agency representative is responsible for maintaining constant cognizance of the status of performance by the contractor. Whenever it appears that a contract is not being, or will not be performed satisfactorily, the contracting officer should be advised promptly.

6. Subpart 4–5.58—Purchases from Government Agencies Under Section 601 of the Economy Act, is amended by revising §§ 4–5.5801 and 4–5.5803 to read as follows:

§ 4–5.5801 Authority.

The authority for this paragraph is contained in the act of May 21, 1920, as amended by section 601 of the Economy Act (June 30, 1932), as amended (31 U.S.C. 686 and 686–1). Nothing in this paragraph affects purchases under working capital funds, or pursuant to specific agency authority for making sales. See 7 AR 93 and 106 regarding availability of appropriations and the handling of payments.

§ 4–5.5803 Participation in extra-departmental contracts.

It is desirable to purchase under the contracts of other Government departments when suitable materials can be secured economically and all parties interested are agreeable to such purchases, but in so doing care should be exercised to handle all negotiations in such a manner as not to become burdensome to the contracting agency. Information concerning extra-departmental contracts may be obtained from the Office of Operations.

Effective date: June 30, 1976.

(AUTHORITY: This amendment is made under the provisions of 5 U.S.C. 301, 40 U.S.C. 485(c).)

Done at Washington, D.C., this 25th day of June 1976.

GEORGE C. KNAPP,
Acting Director,
Office of Operations.

[FR Doc.76–19034 Filed 6–29–76;8:45 am]

CHAPTER 51—COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

CENTRAL NONPROFIT AGENCY FUNCTIONS FOR ALL NON-BLIND WORKSHOPS

Transfer

A notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 21359) on May 25, 1976, which would transfer the central nonprofit agency functions for all non-blind workshops to the National Industries for the Severely Handicapped, Inc., and withdraw the designation of six other national organizations as central nonprofit agencies.

No unfavorable comments have been received. The proposed actions are hereby adopted without change and are set forth below.

Effective date: July 1, 1976.

By the Committee.

C. W. FLETCHER,
Executive Director.

PART 51–3—CENTRAL NONPROFIT AGENCIES

1. Section 51–3.1 is revised to read as follows:

§ 51–3.1 General.

Under the provisions of section 2(c) of the Act, the following are designated central nonprofit agencies:

(a) To represent the workshops for the blind: National Industries for the Blind.

(b) To represent the workshops for other severely handicapped: National Industries for the Severely Handicapped, Inc.

2. Paragraphs (b) and (d) of § 51–3.3 are revised to read as follows:

§ 51–3.3 Assignment of commodity or service.

* * * * *

(b) Within 60 days after notification by the Committee that a commodity or service has been proposed for development by a workshop, Federal Prison Industries, Inc. (for commodities only), and National Industries for the Blind (for commodities and services proposed by National Industries for the Severely Handicapped) shall notify the Committee of their decision to exercise or waive their priorities on the commodity or service.

* * * * *

(d) When National Industries for the Blind exercises its priority for a commodity or service requested by National Industries for the Severely Handicapped, the Committee shall assign the commodity or service to National Industries for the Blind. If National Industries for the Blind has not completed the essential steps to place the commodity or service on the Procurement List within nine months after assignment, the Committee shall reassign it to National Industries for the Severely Handicapped. The nine-month period may be extended for a reasonable period of time when National Industries for the Blind has been delayed by conditions beyond its control.

PART 51–4—WORKSHOPS

3. Section 51–4.1 is revise to read as follows:

§ 51–4.1 General.

To participate under the Act, a workshop shall be represented by the appropriate central nonprofit agency. The designation of the central nonprofit agency shall not be changed without prior written approval of the Committee.

PART 51–5—PROCUREMENT REQUIREMENTS AND PROCEDURES

4. Paragraph (b) of § 51–5.1–2 is revised to read as follows:

§ 51–5.1–2 Allocations and orders.

* * * * *

(b) Letter requests for allocation shall be submitted to the appropriate central nonprofit agency listed below:

Agency	Agency Symbol
National Industries for the Blind, 1511 K St., suite 1043, Washington, D.C. 20005	IB
National Industries for the Severely Handicapped, 4350 East-West Highway, suite 1120, Washington, D.C. 20014	SH

[FR Doc.76–18925 Filed 6–29–76;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 54—GRANTS FOR COMMUNITY MENTAL HEALTH CENTERS

PART 56b—GRANTS FOR REGIONAL MEDICAL PROGRAMS

Interim Rule

The Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare hereby revises, on an interim basis as explained below, Part 54 of Title 42, Code of Federal Regulations, currently entitled "Grants for Specialized Service Facilities." The Secretary has determined that public participation in rulemaking and postponement of effective date with respect to these regulations would be impractical and contrary to the public interest, and, accordingly, that good cause exists for making these regulations effective June 30, 1976.

The purpose of the revision is to implement, in part, the amendments to the Community Mental Health Centers Act made by the Community Mental Health Centers Amendments of 1975 (title III of Pub. L. 94–63) through promulgation of (1) general provisions governing all grants under those amendments, except grants for rape prevention and control under section 231 of the Act (42 U.S.C. 2689q), and (2) provisions governing the development, submission, and approval of State plans for the development of comprehensive mental health services under section 237 of the Act (42 U.S.C. 2689t). In addition, Part 54 is reorganized and its focus narrowed to community mental health centers grant programs by the transfer of Subparts A (Grants for Construction of University Affiliated Facilities for the Mentally Retarded) and E (Grants for Regional Medical Programs) to other locations within the Code of Federal Regulations. Regulations implementing the remainder of the Community Mental Health Centers Act as amended, except the rape prevention and control provisions (section 231 of the Act), will be set forth in subsequent Notices.

The Community Mental Health Centers Amendments of 1975 (Title III of Pub. L. 94–63) were enacted on July 29, 1975. The amendments revised the Community Mental Health Centers Act in its entirety, in form as well as substance. In doing this, the Congress declared its intention that—

> Federal funds should continue to be made available for the purposes of initiating new and continuing existing community mental health centers and initiating new services within existing centers, and for the monitoring of the performance of all federally funded centers to insure their responsiveness to community needs and national goals relating to community mental health care. (Section 302(b), Pub. L. 94–63, 89 Stat. 309 (42 U.S.C. 2689 note)).

Under the prior law, grants were available for construction and initial staffing of community mental health centers, for initial staffing of mental health services for children, for construction or leasing and initial staffing of alcohol abuse and drug abuse treatment facilities and for other activities relating to the prevention and treatment of alcohol abuse and drug abuse.

In place of these programs, the Community Mental Health Centers Amendments of 1975 redefine the scope of services required to be provided by community mental health centers and authorize the following new support programs:

1. *Planning Grants* to plan new community mental health centers that provide the comprehensive range of services set forth in the Act.

2. *Initial Operations Grants* for up to eight years of support for centers that meet all the requirements of the Act; two years of continuation support may be provided existing centers with less comprehensive programs while they implement plans to meet the new service and organizational requirements.

3. *Consultation and Education Grants* for (a) centers whose staffing grants under the former Act have expired, (b) those centers which have received or are receiving operations or staffing assistance and have been in operation not less than 4 years (or not less than two years if it is determined that the center will be unable to adequately provide the consultation and education services during its third or fourth years), and (c) centers which have not received a grant under the Act, except a consultation and education grant, which meet the service requirements other than those for consultation and education and which are not within the catchment area of another community mental health center.

4. *Conversion Grants* to assist in enabling existing centers with an approved application for an initial operations, staffing, or financial distress grant, to provide newly required services.

5. *Financial Distress Grants* to assist for up to three years centers which are no longer eligible for operations or staffing assistance and which would otherwise experience a significant reduction in the quality of services or be unable to provide all of the services required by the Act.

6. *Facilities Grants* for the acquisition, remodeling, leasing, and construction or

expansion of community mental health center facilities and for their initial equipment.

A State plan for the provision of comprehensive mental health services, meeting the requirements of the new Act and the regulations thereunder, must be approved as a prerequisite to eligibility of applicants in the State for any of the above six grant programs.

While the Act also authorizes (in part D) the establishment of a rape prevention and control program within the National Institute of Mental Health, these regulations do not apply to that program.

In contrast to the prior law, the new statute prescribes requirements for the administration of the new programs in great detail. Therefore, it is essential that anyone wishing to participate in the programs become familiar with the provisions of the Act itself, as well as with these regulations. Where the statute deals with authorizations or requirements adequately, the regulations, with rare exceptions, do not repeat or paraphrase the Act.

In order to expedite and facilitate the preparation and review of grant applications under the new program, regulations of a general nature and those essential to the development and approval of State plans under section 237 of the Act are hereby promulgated. It is expected that other regulations will be promulgated to implement the remainder of the new Act, excluding part D (Rape Prevention and Control).

Development of State plans and applications should proceed on the basis of these regulations and interim guidelines. Materials for these purposes may be obtained from the Health Services Division in each of the Department's Regional Offices.

While Pub. L. 94–63 rewrote the Community Mental Health Centers Act in its entirety, the earlier Act and regulations thereunder will continue to be effective (1) in the case of construction grants from allotments to States made under Part A of the earlier Act and (2) in the case of all other grants (and projects, programs, and activities financed thereby) awarded prior to July 29, 1975, the date of enactment of the Community Mental Health Centers Amendments of 1975. This is so even though the recipient of such a grant receives another grant under the 1975 amendments—perhaps for continuation of the earlier project, program, or activity—to which, of course, the new Act, and these new regulations, apply. Note, also, that applicants for grants under section 203(e) of the new Act will, with respect to such grants, continue to be subject (for the most part) to the terms and conditions of the earlier Act and regulations thereunder, except where superseded by the new Act or regulations. (One change relates to the determination of the amount of any award under section 203(e)(1); this amount will be determined under section 220 of the Act as in effect prior to July 29, 1975, except that it will be subject to the further limitation, stated in section 203(e)(1)(A)(ii) of the new Act, that the amount may not exceed the projected operating deficit.) Consequently, for convenience, Subparts B, C, and D of Part 54 of Title 42 of the Code of Federal Regulations as promulgated under the Act prior to amendment by Public Law 94–63 will be appended to the final regulations.

Many Federal statutes and regulations are applicable by their own terms and conditions to the Community Mental Health Centers program. Examples of such statutes and regulations include (but are not limited to): Title VI of the Civil Rights Act of 1954 (42 U.S.C. 2000d et seq.; 45 CFR Part 80); Title IX of the Education Amendments of 1972, particularly Section 901 thereof (20 U.S.C. 1681; 45 CFR Part 86); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; see 41 FR 20296, May 17, 1976); Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. 4582, 88 Stat. 131 relating to alcohol, 21 U.S.C. 1175, 88 Stat. 137 relating to drug abuse; 42 CFR Part 2); and the Health Planning and Resources Development Act of 1974 (42 U.S.C. 300 et seq.). Notice of the applicability of all such statutes and regulations accompanies these regulations through a footnote to Section 54.101 which, although general in nature, specifically cites certain statutes and regulations relating to nondiscrimination. (This is in lieu of an exhaustive list whose accuracy might diminish over time.)

In two instances regulations exist that, in their present form, appear to relate only to the Community Mental Health Centers Act as in effect prior to the amendments of July 29, 1975. One of these is Subpart A of "Policies of General Applicability" (42 CFR Part 50) relating to "Health Services Funding." The second is the "PHS Grant Appeals Procedure" (Subpart D of 42 CFR Part 50). In both these cases steps are being taken to make them applicable to programs, projects, or activities undertaken under the authority of the present Act.

One special body of regulations relates to the Administration of Grants (45 CFR Part 74). It applies, by its terms, to all awards made to State and local governments. Section 54.109 makes most of 45 CFR Part 74 applicable to entities other than State or local governments with respect to awards under the Community Mental Health Centers Act. Subparts H, I, J, and P of 45 CFR Part 74 may be of particular interest to nongovernmental entities since these subparts were not previously applicable (by regulation) to grants made under authority of the Act as in effect prior to July 29, 1975; the Department encourages non-governmental entities subject to these new regulations to examine the changes this may cause. Similarly, it is appropriate for all parties to restudy the provisions of Subpart Q of 45 CFR Part 74, relating to "Cost Principles." While previously applicable, its relevance was then limited to costs of "staffing" or "construction". As applied to grants under the Act as amended (and within the context of deficit financing), its terms and conditions take on a new significance.

Those reviewing and subject to these regulations should also understand that the community mental health centers program is, in many respects, subject to the National Health Planning and Resources Development Act of 1974 (Pub. L. 93–641). The specific provisions of Pub. L. 93–641 affecting the development of services (and facilities) under the Community Mental Health Centers Act are set forth in Pub. L. 93–641 and regulations thereunder. (Materials and information relating to Pub. L. 93–641 may be obtained from the Health Resources Division in each of the Department's Regional Offices.) However, the Community Mental Health Centers Act, by its own terms, adds to the responsibilities of entities mandated by Pub. L. 93–641. These added responsibilities are referred to in the regulations being issued at this time since they derive from the Community Mental Health Centers Act.

Pub. L. 93–641 mandates the establishment of Health Systems Agencies (HSAs) on a nationwide basis, one for each health service area. HSAs are charged with providing effective planning for all health services, physical and mental, for their respective areas. Among their responsibilities, HSAs will: develop a comprehensive health systems plan (including mental health aspects); review and approve (or disapprove) applications for Federal health project grants—including certain of those for community mental health services (and facilities); and review all existing and proposed institutional health services to determine the need for and appropriateness of such services.

At the State level, Pub. L. 93–641 requires that each State designate a State Health Planning and Development Agency (SHPDA). The SHPDA is, among other things, responsible for the development of a State health plan. That plan, which will derive from the (local) health systems plans, will also consider mental health needs and resources. Section 238 of the Community Mental Health Centers Act adds to the responsibilities of the SHPDA through a requirement that the SHPDA, in consultation with the State mental health agency, review the boundaries of mental health catchment areas and access to services within each, and promote compatibility among the boundaries of catchment areas, health service areas, and other subdivisions.

In addition, Pub. L. 93–641 requires each State to adopt a Certificate of Need program covering the development of new institutional services or facilities. Both publicly and privately financed institutions will have to obtain such certification before new services or facilities are initiated (see the Notice of Proposed Rulemaking of March 19, 1976 appearing at 41 FR 11688, particularly proposed regulations for 42 CFR Part 100 and Subpart E of 42 CFR Part 123).

The Department wishes to stress the importance of developing effective formal and informal relations among community mental health centers, State mental health agencies, State mental health advisory councils, and those State and local planning agencies created pursuant to Pub. L. 93–641. In order to effectively carry out their mental health planning responsibilities, HSAs and SHPDAs must become familiar with the requirements of the Community Mental Health Centers Act and mental health programs generally. Similarly, community mental health centers and State mental health agencies and councils must become familiar with the requirements of the National Health Planning and Resources Development Act of 1974 and health planning generally. All parties are urged to work together in the development of local and State plans for health and mental health services and facilities as well as in the development of applications for Federal health project grants and other Federal assistance—helping one another in effectively carrying out their specific responsibilities.

The rules set forth in the interim regulations being issued at this time will be applied by the Public Health Service (through the Alcohol, Drug Abuse, and Mental Health Administration, the National Institute of Mental Health, and the Regional Health Administrators) upon publication until final regulations are adopted and published in the FEDERAL REGISTER. Interested persons are invited to submit written comments, suggestions or objections concerning the regulations promulgated by this Notice of Interim Rulemaking to the National Institute of Mental Health, 5600 Fishers Lane, Room 17–C–17, Rockville, Maryland 20852, on or before August 30, 1976. All comments received within this period will be considered in the course of development of final regulations, and will be available for public inspection at the foregoing address on weekdays (Federal holidays excepted) between the hours of 9:00 a.m. and 4:00 p.m. Following the close of the comment period, the regulations will be revised as warranted by the public comments received in response to this Notice. It is intended to publish the regulations as revised within sixty (60) days after the end of the public comment period. The regulations as set forth below will be applicable and effective July 30, 1976. Revisions thereto, although applicable to grants awarded under the regulations promulgated by this Notice, will be applicable only with respect to activities conducted under grants on and after the date the revisions become effective.

Part 54 of Title 42 of the Code of Federal Regulations is revised in the manner set forth below effective July 30, 1976.

Dated: June 17, 1976.

THEODORE COPPER,
Assistant Secretary for Health.

Approved: June 23, 1976.

DAVID MATHEWS,
Secretary.

Part 54 of 42 CFR is revised as follows:

1. Subpart A of part 54, entitled "Grants for Construction of University Affiliated Facilities for the Mentally Retarded", is transferred to 45 CFR, immediately before part 416, and is redesignated as part 415 of 45 CFR, and §§ 54.1 through 54.7 of such subpart A are renumbered as §§ 415.1 through 415.7, respectively, of 45 CFR.

2. Subpart E of part 54, entitled "Grants for Regional Medical Programs"[1] is inserted immediately after part 56a of 42 CFR and redesignated as part 56b thereof, and §§ 54.401 through 54.414 of such subpart E are renumbered as §§ 56b.101 through 56b.114, respectively, of 42 CFR.

3. The remainder of part 54 is, effective with respect to grants and applications for grants from appropriations under the amendments made to the Community Mental Health Centers Act by the Act of July 29, 1975 (Pub. L. 94–63) (but not to the extent inconsistent with section 203(e)(1) of the Community Mental Health Centers Act as included in those amendments), revised to read as follows:

Subpart A—General Provisions

Sec.
54.101 Applicability.
54.102 Definitions.
54.103 Designation of urban or rural poverty areas.
54.104 State plan for comprehensive mental health services.
54.105 Capacity and responsibility of State agency.
54.106 Form and content of applications.
54.107 Requirements for Community Mental Health Centers under section 201, and for specified information and costs of evaluation under section 206, of the Act. [Reserved]
54.108 Special requirements as to fiscal controls and records.
54.109 Applicability of 45 CFR Part 74.
54.110 Additional terms and conditions.

Subpart B—Grants for Planning Community Mental Health Center Programs [Reserved]

Subpart C—Grants for Initial Operation or Staffing [Reserved]

Subpart D—Grants for Consultation and Education Services [Reserved]

Subpart E—Conversion Grants [Reserved]

Subpart F—Financial Distress Grants [Reserved]

Subpart G—Facilities Assistance [Reserved]

APPENDIX A—Weighted Average Thresholds at the Poverty Level in 1969.

AUTHORITY: Community Mental Health Centers Act, except Part D, (42 U.S.C. 2689–2689p, 2689r–2689aa), as amended by title III of the Act of July 29, 1975 (Pub. L. 94–63, 89 Stat. 308–327, 329–333).

Subpart A—General Provisions

§ 54.101 Applicability.

This subpart applies in the case of all grants and applications for grants under, and other aspects of the administration of, the Community Mental Health Centers Act (42 U.S.C. 2689 *et seq.*) except part D thereof (Rape Prevention and Control).[1]

§ 54.102 Definitions.

For purposes of this part, unless the context otherwise requires:

(a) The term "Act" means the Community Mental Health Centers Act, other than Part D thereof.

(b) The terms "State", "State agency", and "National Advisory Mental Health Council" have the meaning ascribed to them by paragraphs (1), (2), and (4), respectively, of section 235 of the Act.

(c) The term "catchment area" means a defined geographic area established or designated pursuant to the State plan of the State of which it is a part (or in the case of an interstate area, the State plans of the States of which it is a part) for purposes of determining the area, and the population thereof, to be served by a community mental health center.

(d) The term "population", with respect to any State or part of a State, means the population thereof as determined by the Secretary on the basis of the latest figures certified by the Department of Commerce.

(e) The term "Secretary" means the Secretary of Health, Education, and Welfare or his delegate.

(f) The term "State plan", with respect to any State, means the State plan (of such State), for the provision of comprehensive mental health services in the State, which is submitted to the Secretary for approval under section 237 of the Act.

(g) The term "comprehensive mental health services" means the services described in section 201(b)(1) of the Act.

(h) The term "community mental health center" has, except for purposes of grants and applications for grants under part B of the Act, the meaning ascribed to it by section 201 of the Act.

(i) The term "nonprofit", as applied to any entity, means a corporation or association, or an entity which is owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

(j) The term "regulations" means regulations promulgated by the Secretary.

§ 54.103 Designation of urban or rural poverty areas.

(a) *Purpose.* This section establishes the procedure for designating catchment

[1] Activities conducted pursuant to the Act and this part are subject to the applicable requirements of other Federal statutes and regulations. Particular attention is called to the nondiscrimination requirements of the following Federal statutes and regulations: (1) Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d *et seq.*) and implementing regulations (45 CFR Part 80); (2) Title IX of the Education Amendments of 1972, particularly section 901 thereof (20 U.S.C. 1681) and implementing regulations (45 CFR Part 86); and (3) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

areas in each State as urban or rural poverty areas (except for purposes of grants under section 203(e) of the Act).

(b) *Definitions.* For purposes of this section—

(1) The "poverty level" with respect to the population in the 50 states, the District of Columbia, and those catchment areas in Puerto Rico which are partly or wholly within Standard Metropolitan Statistical Areas, as defined by the Office of Management and Budget, will be determined in accordance with Appendix A to this part.

(2) The term "subarea" means a subdivision of a catchment area for which data are available that are satisfactory to the Secretary for purposes of determining the percent of its population having income at or below the poverty level.

(c) *Eligibility of Areas.* All catchment areas in American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands, and catchment areas in Puerto Rico which are wholly outside of Standard Metropolitan Statistical Areas, as defined by the Office of Management and Budget, are eligible for designation as urban or rural poverty areas. For any other catchment area to be eligible for designation as an urban or rural poverty area,

(1) the area must contain at least one subarea with not less than 15 percent of its population having incomes below the poverty level, and

(2) the population of all such subareas in the catchment area (meeting the test in clause (1)) must be equal to not less than 35 percent of the population of the catchment area.

(d) *Designation of Areas.* At the request of an applicant for a grant under the Act, the Secretary may designate a catchment area which is eligible under paragraph (c) of this section as an urban or rural poverty area for the period of the grant if the applicant demonstrates to the satisfaction of the Secretary that the project, program, or activity (or the facility involved) for which the grant is sought does or will, within the period of the grant or such shorter period as the Secretary may prescribe, substantially serve the needs for mental health services of the population of the subarea or subareas by reason of whom the catchment area was an eligible area under paragraph (c) of this section.

§ 54.104 State plan for comprehensive mental health services.

A State plan of any State will not be approved under section 237 of the Act for any fiscal year unless it complies with the following requirements:

(a) *Form and manner of submittal.* The State plan shall be submitted in such form and manner as the Secretary may from time to time prescribe, except that, for the fiscal year 1976, the most recent State plan of the State approved under section 204 of the Act as in effect before July 29, 1975, may be submitted to the Secretary for approval under section 237 of the Act, and may be approved by the Secretary, if (1) it shows all changes that have been made in the plan since its most recent approval and (2) it contains assurances satisfactory to the Secretary, and the Secretary finds, that the plan complies with the requirements of such section 237.[3]

(b) *Catchment areas.* (1) The State plan of a State shall divide the State into catchment areas. The population of any such area may not be less than 75,000 nor more than 200,000 except to the extent permitted by the Secretary because he finds such action will assist in the better provision of comprehensive mental health services in the area.

(2) The State plan shall provide that, after such a division has been made, if any variation in the population of an area reduces it below the minimum or increases it above the maximum permitted by or pursuant to paragraph (b)(1) of this section by more than 25 percent, the State agency will submit a modification of the plan revising its catchment areas appropriately, unless the Secretary determines, at the request of the State, that such a revision is unnecessary or undesirable in carrying out the purposes of the Act.

(3) The determination of catchment areas under the State plan shall comply both with this paragraph (b) and with clauses (1), (2), and (3) of section 238 of the Act.

(4) The Preceding provisions of this paragraph (b) do not prevent formation of an interstate catchment area consisting of areas in two or more States with State plans approved under section 237 of the Act. In the case of an interstate catchment area, the requirements of such preceding provisions must be met by that area, but with the portion of the area in each State being included in the State plan of such State and with each such plan being appropriately modified in case of a reduction or increase in population of the area which would require a modification in the case of a noninterstate area.

(c) *Determination of relative need.* The State plan of a State shall set forth the relative need of each catchment area in the State for community mental health centers and their services, as indicated by—

(1) The relative need of the population of the area for comprehensive mental health services, determined after consideration of all relevant factors, including particularly—

(i) The demographic, economic, and social characteristics of each area, including the relative size of population groups considered to be more likely than others to have a need for such services;

(ii) The extent of alcoholism, drug abuse, suicide, crime, delinquency, and other social or health problems in each area; and

(iii) The level and appropriateness of the utilization of public mental institutions by the residents of each area and the need for screening residents of each area admitted to, and for follow-up services for residents of each area discharged from, public mental institutions therein;

(2) The types and the relative availability and accessibility of mental health service resources, as well as of other health or social services facilities and personnel.

(d) *Statistical procedures.* The State plan of a State shall describe the statistical procedures used in the determination of relative need pursuant to paragraph (c) of this section and shall identify the various factors applied in such determination and the relative weight assigned to each such factor.

(e) *Public Comment on and Access to the State Plan.* The State plan of a State shall contain or be accompanied by (1) documentation and other evidence showing that, in the process of its development and before it was submitted to the Secretary, a reasonable opportunity was afforded to interested agencies, organizations, and individuals to present their views and to comment to the State agency upon the proposed plan, and (2) assurances satisfactory to the Secretary that after its submission to the Secretary, and approval by him, a reasonable opportunity will be afforded to interested agencies, organizations, and individuals to comment to the State agency upon the administration of the plan proposed and any modification of the plan. The plan and any modification of the plan shall, when submitted to the Secretary for approval, be accompanied by, or the State agency shall include in reports to the Secretary, as may be appropriate, (3) a summary of such views and comments and the account, if any, which was taken of such views and comments, and (4) a description of the various places in the State, which must have been readily accessible to the public, at which the proposed plan or modification thereof was made available and of the various places (also readily accessible) in the State at which the plan, including any modifications, continues to be available.

(f) *Compliance with statutory requirements.* The State plan of a State shall contain or be accompanied by (in such manner and detail as the Secretary may provide):

(1) Evidence satisfactory to the Secretary that—

(i) The plan complies with section 237(a)(2)(A) of the Act (relating to consistency of the plan with the mental health provisions of the State health plan prepared in accordance with section 1524(c)(2), or approved under section 314(a), of the Public Health Service Act);

(ii) The program for community mental health centers set forth pursuant to section 237(a)(2)(B) of the Act—

(A) Has been developed, insofar as a catchment area which is part of an interstate area is concerned, after consultation with the other State or States concerned, and

[3] Note that any State plan of a State approved under section 237 of the Act which meets the requirements of paragraph (2)(D) of section 314(d) of the Public Health Service Act may be incorporated by reference in the application of that State under such section 314(d) in lieu of establishing a separate State plan under such paragraph (2)(D).

(B) Has, to the extent practicable, been coordinated with (I) the planning of city, metropolitan area, or interstate planning agencies to achieve consistency between the planning of community mental health centers and other health or social services planning, and (II) the planning for alcoholism or drug abuse treatment or rehabilitation programs;

(2) Information as to how the plan will comply with section 237(a)(2)(D) of the Act (relating to emphasis on outpatient services);

(3) Assurances satisfactory to the Secretary that the State advisory council designated pursuant to section 237(a)(1)(A) of the Act—

(i) Will meet as often as necessary to assure fulfillment of its function of consultation with the State agency, but not less often than once each 90 days, with the dates of the meetings and a summary of the recommendations and other actions of the council resulting from such meetings being included in appropriate reports made to the Secretary by the State agency pursuant to the Act and these regulations;

(ii) Will be selected through a process, described in the plan, meeting the requirements of section 237(a)(1)(A) of the Act and assuring representation of consumers and minority groups which the Secretary determines to be adequate for purposes of the Act (and, for purposes of this clause and section 237(a)(1)(A) of the Act, an individual shall not by reason of membership on the governing board or advisory committee of a community mental health center be considered a provider); and

(iii) Will have a reasonable opportunity to review and comment on the State plan and any amendments thereof;

(4) Provision for determining the priority of projects in the State under part C of the Act in accordance with the relative need therefor, as determined under the State plan and this part 54; and

(5) Provision for adequate community mental health centers to furnish needed mental health services for people residing in the State, including adequate community mental health centers to furnish needed mental health services for persons unable to pay for them.

§ 54.105 Capacity and responsibility of State agency.

(a) The State plan required by § 54.104 must be accompanied by—

(1) Evidence satisfactory to the Secretary that the State agency has the legal authority, and the capacity and capability, to carry out its functions under the State plan;

(2) Assurances satisfactory to the Secretary that—

(i) The periodic review of catchment areas required by section 238 of the Act will be made and information will be provided on how, and how often, such review will be made;

(ii) When the State agency submits comments pursuant to section 206(d) (or the last sentence of section 212(b)) of the Act on any application the State agency will at the same time or before send a copy of the comments to the applicant and to the appropriate Health Systems Agency or Agencies (designated pursuant to Title XV of the Public Health Service Act); and

(iii) The State agency will assist in identifying problems which community mental health centers in the State may have in meeting the requirements of section 206(c)(1)(I), (J), (K)(ii)(II), and (L)(i) of the Act and will, through working with other appropriate State agencies and otherwise, assist the centers in meeting such problems; and

(3) A description of how, and how often, the review referred to in paragraph (a)(2)(i) of this section will be made and of how the assistance referred to in paragraph (a)(2)(iii) of this section will be provided.

§ 54.106 Form and content of applications.

(a) *Form and manner of submission.* Each application for a grant under the Act shall be submitted in such form and manner and at such time or times as the Secretary may prescribe, and shall contain such information as the Secretary may find necessary for purposes of the Act or regulations.

(b) *Incorporation by reference and simplified applications.* To the extent permitted by, and subject to such conditions as may be prescribed by, the Secretary—

(1) An application for a grant under any section of the Act may comply with any requirement of the Act or regulations relating to the content of that application or its accompanying material by incorporating by reference portions of the content of an application, or its accompanying material, for a grant filed by the same applicant under another section of the Act; and

(2) An application for a grant under any section of the Act may comply with any requirement of the Act or regulations relating to the content of that application or its accompanying material by indicating the changes in or additions to the content of an application, or its accompanying material, filed by the same applicant for an earlier grant under that section of the Act.

(c) *Evidence of applicant's authority and capacity.* Each application for a grant under the Act shall include such evidence as the Secretary may find necessary of the applicant's legal authority, and of its capacity and capability, to carry out the project, program, or activity for which the grant is requested.

(d) *Information on catchment area, program objectives, and expected benefits.* Each application for a grant under the Act shall contain or be accompanied by—

(1) A narrative and statistical description of the population, geographical characteristics, and other general characteristics of the applicant's catchment area;

(2) The general objectives of the applicant's proposed program;

(3) A description of the need of the population of the area for the services to be provided under such program as indicated by the entity's assessment of that need and any other available data, including the needs of population groups having special needs with respect to such services and including the reasons for any differences between that description and the need or needs as reflected in (i) the State's plan approved under the Act, and (ii) appropriate portions of the plans approved by the State Health Coordinating Council (designated pursuant to title XV of the Public Health Service Act);

(4) The general results or benefits expected to be derived from the assistance provided by the grant requested by the applicant; and

(5) Evidence that the application and accompanying material have been submitted to the State agency and, as and to the extent directed by that agency, to any other State or local agency concerned with the project, program, or activity for which the grant is requested.

(e) *Information on how amount of requested grant is determined.* Each application for a grant under the Act shall contain or be accompanied by an explanation of how the applicant determined the amount of the grant requested, including an explanation of the portion thereof (if any) included to take account of underestimates of expenditures or overestimates of receipts of fees and other Federal, State, local and other funds.

(f) *Evidence of compliance with terms of prior grant.* An application for a grant under the Act shall contain or be accompanied by documentation and other evidence necessary to enable the Secretary—

(1) In the case of an applicant which received one or more grants under part A or B of the Act for a period which has ended, to determine whether the applicant met, with respect to the most recent grant (if there has been more than one) and in accordance with the section under which that grant was made, the applicable requirements of section 201 of the Act;

(2) In the case of an applicant which did not receive such a grant but did receive one or more grants for a period which has ended under any part of the Act (other than part A) as in effect before July 29, 1975, to determine whether the applicant met, with respect to the most recent such grant (if there has been more than one) and in accordance with the section or sections under which that grant was made, the requirements applicable to such grant under the Act (as so in effect);

(3) In the case of an applicant which did not receive a grant referred to in paragraph (f)(1) or (2) of this section but did receive a grant under part C of the Act, or under part A of the Act as in effect before July 29, 1975, for a project completed at least a year before the filing of the application, to determine whether the applicant met, with respect to the grant for the most recent such project (if there has been more than one), the requirements applicable to such

most recently completed project under such part C or A; and

(4) In the case of an applicant which received a grant referred to in paragraph (f), (1), (2), or (3), of this section to determine whether the applicant complied with the assurances required to support the application for that grant.

(g) *Evidence of compliance with Act and regulations.* Each application for a grant under the Act shall also contain or be accompanied by (1) such information, evidence, documentation, and assurances, in addition to what is otherwise required by the Act and regulations, as may be necessary to enable the Secretary to determine that the applicant is, or will be, in compliance with applicable requirements of the Act and regulations, and (2) such information as to how the applicant plans to carry out any assurances required under the Act or regulations as the Secretary may find necessary for purposes of the Act.

§ 54.107 Requirements for Community Health Centers under section 201, and for specified information and costs of evaluation under section 206, of the Act. [Reserved]

§ 54.108 Special requirements as to fiscal controls and records.

The approval of an application for a grant under the Act is conditioned upon assurances satisfactory to the Secretary that the recipient will maintain such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal and nonFederal funds received for the project, program, or activity with respect to which the grant was made and will file with the Secretary such reports relating to receipt and expenditure of such funds as the Secretary finds necessary for the purposes of the Act and regulations.

§ 54.109 Applicability of 45 CFR part 74.

The provisions of 45 CFR part 74 (Administration of Grants) apply in the case of grants under the Act, except that—

(1) Subpart N thereof applies to grantees, other than State or local governments (as defined in such part 74), only to the extent prescribed by the Secretary; and

(2) The provisions of such part 74 shall not prevent the inclusion, in the cost of operation of any program, project, or activity with respect to which such a grant is made, of any amounts which would otherwise be unallowable under such part 74 but—

(i) Which are approved in advance by the Secretary—

(A) For a specified purpose or purposes (for which such amounts are used),

(B) As being reasonable for such program, project, or activity, and

(C) As being in accord with general principles of accounting;

(ii) Which comply with such other conditions as the Secretary may impose; and

(iii) Which in the aggregate do not exceed the total of the fees and funds, other than grants under the Act, received for such program, project, or activity.

§ 54.110 Additional terms and conditions.

Any grant under the Act is conditioned upon compliance by the grantee with such further terms, conditions, and requirements as the Secretary may find necessary for purposes of the section or sections under which the grant is made.

Subpart B—Grants for Planning Community Mental Health Center Programs [Reserved]

Subpart C—Grants for Initial Operation or Staffing [Reserved]

Subpart D—Grants for Consultation and Education Services [Reserved]

Subpart E—Conversion Grants [Reserved]

Subpart F—Financial Distress Grants [Reserved]

Subpart G—Facilities Assistance [Reserved]

APPENDIX A.—*Weighted average thresholds at the poverty level in 1969*

Size of family	Total	Nonfarm			Farm		
		Total	Male head	Female head	Total	Male head	Female head
All unrelated individuals	$1,834	$1,840	$1,923	$1,792	$1,569	$1,607	$1,512
Under 65 yr	1,888	1,893	1,974	1,826	1,641	1,678	1,552
65 yr and over	1,749	1,757	1,773	1,751	1,498	1,508	1,487
All families	3,388	3,410	3,451	3,082	2,954	2,965	2,757
2 persons	2,364	2,383	2,394	2,320	2,012	2,017	1,931
Head under 65 yr	2,441	2,458	2,473	2,373	2,093	2,100	1,984
Head 65 yr and over	2,194	2,215	2,217	2,202	1,882	1,883	1,861
3 persons	2,905	2,924	2,937	2,830	2,480	2,485	2,395
4 persons	3,721	3,743	3,745	3,725	3,195	3,197	3,159
5 persons	4,386	4,415	4,418	4,377	3,769	3,770	3,761
6 persons	4,921	4,958	4,962	4,917	4,244	4,245	4,205
7 or more persons	6,034	6,101	6,116	5,952	5,182	5,185	5,129

SOURCE: U.S. Bureau of the Census (Department of Commerce), "Census of Population: 1970—General Social and Economic Characteristics," final report PC (1)–C series, app. B, pp. 29–31.

[FR Doc.76–18783 Filed 6–29–76;8:45 am]

Title 45—Public Welfare

CHAPTER IV—SOCIAL AND REHABILITATION SERVICE (REHABILITATION PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 415—GRANTS FOR CONSTRUCTION OF UNIVERSITY AFFILIATED FACILITIES FOR THE MENTALLY RETARDED

Redesignation

CROSS REFERENCE: For a document redesignating §§ 54.1 through 54.7 (Subpart A) of 42 CFR Part 54 as 45 CFR Part 415, see FR Doc. 76–18783 appearing elsewhere in this issue.

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[RM–2663; RM–2645]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations (Petersburg and Wrangell, Alaska)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Petersburg and Wrangell, Alaska).

1. The Commission has before it two petitions submitted by the Alaska Educational Broadcasting Commission (AEBC) proposing the assignment of Channels 265A and 269A to Petersburg and Wrangell, Alaska, respectively. AEBC contends that in Alaska the noncommercial educational Channels 201–20 and Channels 221 to 260 are allocated for use by other radio services (§ 73.204(c)), but that FM broadcast operations on Channels 261–300 are available for use by commercial and noncommercial educational stations.

2. Ten communities in Alaska are currently assigned FM channels in the Table of Assignments (§ 73.202(b)). FM stations are licensed or authorized in six of these communities. Anchorage, the largest city in Alaska, is assigned five channels, four of which are in use and the other applied for. Station KTOO (FM), Juneau, Alaska, is licensed as a 10-watt educational station on Channel 282. FM channels are also assigned to Cordova and Seward (neither of these channels is occupied), Fairbanks (one licensed[1] and one applied for), Kenai (applied for), Ketchikan (one licensed, one unoccupied), Kodiak (licensed), Nome (applied for) and Sitka (unoccupied).

3. Wrangell (pop. 2,029),[2] a remote island community in southeast Alaska, is located in the Wrangell-Petersburg Census Division (pop. 4,913) approximately 150 miles southeast of Juneau. It has no local broadcast transmission service. Petersburg (pop. 2,042), also located in the Wrangell-Petersburg Census Division, has no local broadcast service. AEBC states that a first local broadcast service on a noncommercial basis would provide the community with reliable weather information; reports of interest to local fishermen and forestry workers; daily local, state and national news; and a local forum in which community problems can be explored.

4. Section 73.207(a) of the Commission's Rules requires that co-channel

[1] Station KUAC, licensed to the University of Alaska, operates on Channel 284.

[2] All population figures are taken from the 1970 U.S. Census.

Class A stations be separated 65 miles and that co-channel Class C stations be separated 180 miles. There are no other stations operating in Alaska on Channel 269A, the channel proposed for Wrangell. Insofar as adjacent channels are concerned, either there is no station operating on these frequencies in Alaska or the spacing far exceeds the Commission mileage separation requirements. Although Channel 269A and adjacent channels would no longer be available within a radius of 105 miles from Wrangell, there are at least eleven other FM channels which could be assigned to any community in the area and nineteen channels which could be assigned to parts of it. Since there are only three communities within 105 miles of Wrangell with a population greater than 1,000, one of which already has two stations assigned to it, there are more than enough FM channels still available to meet any future radio broadcast needs.

5. Petersburg is considerably more than 300 miles from Cordova, the only other town in Alaska to which Channel 265A is also presently assigned and is located at an even greater distance from any community in Alaska to which an adjacent Class C channel is assigned. Any of the ten Class A channels set aside for FM broadcast use in Alaska, including Channel 265A, could be assigned to Petersburg, in complete conformity with all Commission mileage separation requirements.

6. The Alaska Educational Broadcasting Commission states that, if Channels 265A and 269A are assigned to Petersburg and Wrangell, respectively, it will, through an educational corporation or a school district functioning under its aegis, apply for their use.

7. Canadian concurrence has been obtained for the assignment of the above-mentioned channels.

8. It appears that a sufficient showing has been made to warrant the assignment of Channels 265A and 269A to Petersburg and Wrangell, Alaska, respectively. In view of the plethora of FM channels which could be assigned to these two communities and the need to expedite consideration of educational channel assignments to permit educational institutions to qualify for HEW funds by a certain date, it would appear that initiating a rule making proceeding to examine whether to make the required assignments would result in needless delay, would serve no useful purpose and is therefore unnecessary. 5 U.S.C. § 553(b)(3)(B) and 5 U.S.C. 553(d)(3).[3]

[3] Our action here in assigning Class A channels to Wrangell and Petersburg, respectively, should not be construed as precedent for future FM channel assignments in Alaska or elsewhere. The factual pattern here is unusual in that it involves Class A channel assignments to small, isolated Alaskan communities to be used for noncommercial, educational purposes. Further, the assignments would create negligible preclusion and would affect no existing stations. Moreover, no opposition responses to the petitions were received. In our estimation, this justifies a conclusion that, in this particular instance, the issuance of a Notice of Proposed Rule Making would be unnecessary. We emphasize, however, that it is not our intention to follow this approach in locations other than Alaska. Further, this policy will not be utilized in the case of proposals for commerical channel assignments in Alaska, second FM assignments to Alaskan communities, assignments resulting in significant preclusion, or assignments to population centers in Alaska.

9. Accordingly, *it is ordered*, That effective August 2, 1976, § 73.202(b) of the Commission's rules and regulations, the FM Table of Assignments, is amended with respect to the cities listed below to read as follows:

City	*Channel No.*
Alaska:	
Petersburg	265A
Wrangell	269A

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

(Secs. 4, 303, 307, 310, 48 Stat., as amended, 1066, 1082, 1083, 1086; 47 U.S.C. 154, 303, 307, 310.)

Adopted: June 18, 1976.

Released: June 25, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-18953 Filed 6-29-76;8:45 am]

[Docket No. 20749; RM-2484]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, FM Broadcast Stations (Osage, Iowa)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Osage, Iowa).

1. The Commission has under consideration its Notice of Proposed Rule Making, adopted March 26, 1976, 41 Fed. Reg. 14899, inviting comments on a proposal to assign FM Channel 224A to Osage, Iowa, as its first local aural service. This proceeding was instituted on the basis of a petition filed on October 30, 1974, by Harold A. Jahnke (Jahnke).[1] There were no oppositions to the proposal. Supporting comments were filed by petitioner.

2. Osage (pop. 3,815), the seat of Mitchell County (pop. 13,108), is located approximately 110 miles north of Des Moines, Iowa, and 130 miles south of Minneapolis-St. Paul, Minnesota. There is no local broadcast service in Osage or in Mitchell County. Cannel 224A could be assigned to Osage in full compliance with the Commission's minimum mileage separation rule and without affecting any presently assigned channel in the FM Table of Assignments if used at a site at least 2.3 miles northwest or west of Osage.

3. Jahnke points out that Osage is the largest trading center in Mitchell County. He adds that Osage has thirty retail stores and seven farm equipment dealers which regularly attract shoppers from communities fifteen miles from Osage. Jahnke also states that Osage, as the county seat, is the headquarters for all county offices, the courthouse, and the local offices of state agencies like the Iowa Farm Bureau and of feredal agencies like the Agricultural Stabilization and Conservation Service and Soil Conservation Service. He notes that Osage is one of only a few cities in its population class in Iowa to record an increase in population since the 1960 Census. Jahnke, in supporting comments, reiterates his intent to file an application for a construction permit, and, if granted, will construct an FM station at Osage, Iowa.

4. We have given careful consideration to the proposal in this proceeding and believe that it would be in the public interest to assign Channel 224A to Osage, Iowa. It has been shown that there is a demand for its use and assignment of the channel would provide the community with an opportunity to institute a first local broadcast transmission service.

5. Authority for the adoption of the amendment contained herein appears in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and in § 0.281 of the Commission's rules and regulations.

6. In view of the foregoing, *it is ordered*, That effective August 2, 1976, the FM Table of Assignments is amended to read as follows:

City	*Channel No.*
Osage, Iowa	224A

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

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

Adopted: June 18, 1976.

Released: June 23, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-18955 Filed 6-29-76;8:45 am]

[1] Harold A. Jahnke, the petitioner, had made an alternate proposal in the original petition to assign Channel 240A to Osage because he was aware of the fact that Station KCHA-FM was continuing to operate on Channel 285A at Charles City, Iowa, after February 1, 1974, instead of switching over to Channel 240A as ordered by the Commission. See Second Report and Order, Docket No. 19401, 39 F.C.C. 2d 452 (1973). However, this alternate proposal of assigning Channel 240A to Osage was not proposed in the Notice as an amendment to the FM Table of Assignments because the Commission recently ordered Station KCHA-FM to cease operations on Channel 285A and to make arrangements to begin broadcasting on Channel 240A at Charles City, Iowa. See File No. BPH-8644 and BPH-8963, Mimeo No. 39633, March 9, 1976.

[FCC 76-545]

CONTROL STATIONS

Order; Frequency Tolerance

Correction

In FR Doc. 76-18388 appearing on page 26222, in the issue of Friday,

June 25, 1976, the section heading under Part 91, should be corrected to read as follows:

§ 91.103 Frequency stability.

Title 22—Foreign Relations

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[Reg. 16]

PART 216—ENVIRONMENTAL PROCEDURES

On March 24, 1976, the Agency for International Development (AID) proposed regulations to amend 22 CFR by adding a new Part 216 entitled "Environmental Procedures" in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). These regulations were proposed in accordance with the Stipulation and Court Order of December 5, 1975, issued by the US District Federal Court for the District of Columbia in the case of Environmental Defense Fund, Inc. for International Development, et al.

At the time of the March 29, 1976 publication of the proposed regulations, AID solicited comments on all aspects of the regulations and received 14 comments in response from environmental organizations, federal agencies, consultants and interested persons. The comments have been carefully considered and several changes have been made to the proposed regulations in response to the suggestions made.

Response to Comments on the Proposed Procedures

Comments received in response to the proposed March 29, 1976 regulations are available for public inspection at AID. All comments received, including those received after the terminal date of the period, have been fully considered and many of the suggestions have been adopted or substantially satisfied by editorial changes, deletions or additions to the regulations. The regulations have also been reorganized in response to the suggestion of one commenter to facilitate an understanding of the applicable procedures.

The principal comments are discussed as follows:

1. Applicability of Procedures

One commenter felt that the language of this section restricted the coverage of these procedures to "selected" research and commodity procurement and that no guidance was available to explain which of these areas were to be either included or excluded. To accomodate this concern this part of the procedures has been revised to make clear that they apply to all agency programs. The use of the word "selected" had been utilized to indicate that some activities such as AID research and commodity procurement would not normally be expected to significantly affect the enviroment.

2. General Procedures

One commenter was concerned that a draft Environmental Impact Statement (EIS) will not be circulated prior to the approval of the Project Review Paper or its equivalent. The proposed procedures required an Environmental Analysis to be prepared at the earliest possible time in the cycle between program conception and implementation. This became the basis for the Threshold Decision which determined whether a program or activity was likely to significantly affect the environment. The proposed activity at this and the next stage of development, the Project Review Paper (PRP), is in a very formative state. For this reason the actual preparation of a draft EIS with alternative considerations does not begin until after a decision has been made in the Project Review Paper that the overall concept of an activity is consistent with AID objectives and recipient country request. However, approval of the PRP does not insure that the activity will go forward—that decision is made after preparation of the Project Paper which will be accompanied by the final EIS which has had full public exposure. Therefore the agency feels that the public and other Federal agencies will be brought into the EIS process at the earliest possible time after the conceptual stage with sufficient agreement that it is worthy of being further considered. To bring the public and other agencies into the EIS process at an earlier time would be inconsistent with good management and utilization of valuable expertise. It should be noted that in the final regulations that the term Environmental Analysis has been replaced by Initial Environmental Examination.

3. Miscellaneous Explanatory Statements or Words

One commenter expressed concern that the agency by using certain words or phrases or explanation within the regulations was unnecessarily prejudging issues and implying a biased position. These appeared in I–B as * * * "in the context of the realities of the sovereignty of developing countries their differing priorities and the limited data (including environmental) available", in III–C as "(or EIS in rare cases)". These words have been deleted in view of the fact that they are not essential to the guidance which is provided by the procedures.

4. Position of Environmental Coordinator

One commenter suggested that specific responsibilities should be written into the position description of the newly established position of Agency Environmental Coordinator. Another commenter also suggested that the identified organizational location of the position should be changed to lend more prestige and authority to the position.

The Agency feels that while this concern is well intended it is based only on information contained within the regulations and not on other factors that influence both the role and organizational level of the Environmental Coordinator, therefore no changes have been made in the proposed regulations in § 216.4, Responsibilities.

5. Scope of Environmental Assessments

One federal and four public commenters expressed concern that the word "generally" used in Section I–C4 to describe the similarity of the scope of the EA and EIS indicated that AID was attempting to avoid the type of analysis for proposed activities in "host" countries that is envisioned by NEPA. In order to clarify that the EA is an independent assessment apart from the EIS, Section–C4 has been clarified and the final sentence deleted.

To accomplish the Agency's policies of (1) assisting in the strengthening of the indigenous capabilities of developing countries to appreciate and evaluate the potential environmental effects of proposed projects and (2) ensuring that any environmental consequences of proposed AID activities are considered in collaboration with the host country, and yet remain consistent with the intent of NEPA, AID approaches the evaluative process differently depending upon the environment likely to be impacted. When impacts are limited to a foreign jurisdiction, the approach is to enlist the cooperation of the host country in anticipating and preventing decline in the quality of the environment. U.S. Federal agencies are also requested to participate in defining any likely impacts and alternatives to the proposed activity. When the U.S. or global environments or areas outside the jurisdiction of any nation are likely to be significantly affected, AID utilizes the EIS review procedures of NEPA. This is now clarified in § 216.3B.

6. EIS Preparation and Coverage

Three commenters expressed concern that EIS category (3) of § 216.7 was too ambiguous and needed clarification as to the areas of impact that are included. Three public commenters also suggested that the discretionary authority of the Administrator for determining whether an Environmental Impact Statement would be prepared for actions deemed to significantly affect areas of unique natural or cultural heritage value was inappropriate and that Environmental Impact Statement preparation in these instances should be made mandatory. One Federal agency supported the discretionary authority but joined one public commenter in suggesting that the regulations should include a procedure for bringing the question of Environmental Impact Statement preparation to the Administrator for resolution.

The ambiguity of the term "areas of unique natural or cultural heritage value" became apparent during the review and discussion of the proposed procedures with other federal agencies. The resolution of the issue of what constitutes an area of unique natural or cultural heritage value in the developing countries, requires the formulation of a clear definition that would take into account views of the host government, AID and likely reactions to decisions on the part of the public at large. AID, has therefore, decided to provide, in its identification of significant effects of proposed actions, for the flagging of effects

upon "natural or cultural heritage" listed by the World Heritage Committee pursuant to Article XI of the Convention Concerning the Protection of the World Cultural and Natural Heritage, of November 1972. This aspect is addressed by the inclusion in 216.1, C, 3 of the procedures, of the listings of the World Heritage Committee as an item to be carefully considered in determining any significant effects of proposed Agency actions. In order to provide that any actions of the Agency that are highly controversial or of significant public interest in the US receive attention at the highest policy level of the Agency, the regulations state in 216.6 that the Administrator may exercise his discretion and elect to prepare an Environmental Impact Statement rather than an Environmental Assessment on any aspect of the human environment whenever he feels it is warranted. The administrative structure of the Agency is such that issues of important policy are automatically brought to the attention of the administrators who are charged in § 214.4 with the responsibility for implementing these regulations. No further guidance is appropriate at this time, however, this process will be reviewed after additional experience is gained with the overall procedures.

Because of the importance of promptly making known to AID offices, other governments and US Federal Agencies, environmentalists, and other interested persons, the content of these regulations and because of the desire to promptly implement this program, the Administrator finds good cause to declare these regulations effective immediately upon publication.

Title 22 of the Code of Federal Regulations, setting forth "Environmental Procedures" in accordance with the requirements of the National Environmental Policy Act of 1967 (NEPA), is amended by adding a new Part 216 as set forth below.

Dated: June 28, 1976.

DANIEL PARKER,
Administrator.

Sec.

216.1 Introduction.
216.2 Applicability of procedures.
216.3 General procedures.
216.4 Responsibilities.
216.5 Environmental assessments.
216.6 Environmental impact statements.
216.7 Public hearings.
216.8 Records and reports.

AUTHORITY: (42 U.S.C. 4332; 22 U.S.C. 2381). 2381).

§ 216.1 Introduction.

(a) *Purpose.* In accordance with the National Environmental Policy Act of 1969 (NEPA) and relevant AID policies, the following general procedures are established. These procedures have been developed to insure that environmental factors and values are integrated into the decision-making process and to assign responsibility within the Agency for assessing the environmental effects of AID's actions.

(b) *Environmental policy.* In the conduct of its mandate to help upgrade the quality of life of the poor in developing countries, AID conducts a broad range of activities addressing such basic problems as hunger and malnutrition, overpopulation, disease, disaster, illiteracy and lack of adequate housing and transportation. As authorized by the Foreign Assistance Act (AA) of 1961 as amended, AID finances or directly furnishes both bilateral and multilateral development assistance through loan and grant programs of technical advisory services, research, training, construction and commodity support. These programs are carried out under the foreign policy guidance of the Secretary of State and in the context of the realities of the differing priorities of the developing countries. Within this framework, it is AID policy:

(1) To ensure that the environmental consequences of proposed AID-financed activities are identified and considered by AID and the host country [1] prior to a final decision to proceed, and that appropriate environmental safeguards are adopted;

(2) To assist in strengthening the indigenous capabilities of developing countries to appreciate and evaluate the potential environmental effects of proposed development strategies and projects, and to select, implement and manage effective environmental protection measures, and;

(3) To identify impacts resulting from its actions upon the environment including those elements of the world biosphere which are the common natural and cultural heritage of mankind.

(c) *Definitions*—(1) *CEQ guideline or guidelines.* Guidelines promulgated by the President's Council on Environmental Quality (CEQ) under NEPA and Executive Order 11514, entitled "Preparation of Environmental Impact Statements" (FEDERAL REGISTER, Volume 38, Number 147, August 1, 1973), and amendments thereto.

(2) *Initial environmental examination.* As used, herein, an Initial Environmental Examination is the initial study of the reasonably foreseeable effects of a proposed action on the human environment. Its function is to provide the basis for a Threshold Decision as to whether an Environmental Assessment or an Environmental Impact Statement will be required. If an Environmental Assessment or an Environmental Impact Statement is required, the Examination will also provide the basis for its preparation. The Initial Environmental Examination should identify and describe where appropriate: (i) The nature, scope and magnitude of any reasonably foreseeable effects of an action or any part of an action on the human environment; (ii) the reasonably foreseeable effects of any such environmental impact on organisms in the biosphere including human life; and, where an Environmental Assessment or an Environmental Impact Statement is required; (iii) reasonable alternatives to the proposed action which will be studied in detail in the Environmental Assessment or draft Environmental Impact Statement. The Initial Environmental Examination will be an integral part of the Project Review Paper or equivalent document which will be circulated to selected Federal agencies for comment, when an Environmental Assessment is to be prepared.

(3) *Threshold decision.* A formal Agency decision which determines, based on an Initial Environmental Examination, whether a proposed agency action is or is not an action which will have a significant effect on the human environment, and, if so, whether an Environmental Assessment or an Environmental Impact Statement is required. This decision is made in the very early stages of activity conception, even before the activity is reviewed for consistency with AID objectives and recipient requests. While it is difficult to inclusively identify all such actions, types to be carefully considered for environmental effects would include those:

(i) Where the impact is localized, but the human environment will be significantly affected;

(ii) Where the impact is likely to be irreversible or highly controversial;

(iii) Which involve a complex of projects, with individually limited but cumulatively considerable effects;

(iv) Which involve a limited amount of money, but which set a precedent for future actions; or represent a decision in principle about future courses of action;

Actions that should be considered in determining "significant effects" include those which adversely affect such aspects of the human environment as air, water, land, flora and fauna, and socio-economic conditions. Special attention should be given to problems involving solid waste, noise, radiation, hazardous substances, energy sources and natural resources development, and in addition, actions which:

(*a*) Degrade the quality of the human environment;

(*b*) Curtail the range of beneficial uses of the human environment and its resources and serve short-term, to the disadvantage of long-term, environmental goals;

(*c*) May have both detrimental and beneficial effects even if on balance the Agency believes that the effect will be beneficial;

(*d*) Have secondary effects which may be more substantial than the primary effects of the original action.

(*e*) Are likely to have an effect on any natural or cultural heritage listed by the World Heritage Committee pursuant to Article XI of the "Convention Concerning the Protection of the World Cultural and Natural Heritage," of November 1972.

(4) *Environmental Assessment (EA).* The Environmental Assessment is a detailed study of the reasonably foreseeable environmental effects, both positive and negative, of a proposed action and

[1] In every instance in these procedures the terms "host country" or "host government" or "recipient country" are meant to refer to the country that is both receiving and financially participating in the AID assistance under the terms of the FAA.

its reasonable alternatives carried out within or affecting specific developing countries as further described in § 216.5 of these procedures. To the extent practicable The Assessment will be developed in close collaboration with the host country institutions and subject to recipient country review.

(5) *Environmental Impact Statement (EIS)*. The EIS is a detailed study of the reasonably foreseeable environmental impacts, both positive and negative, of a proposed AID action and its reasonable alternatives on areas described in § 216.6 of these procedures. It is a specific document having a definite format and content, as required by NEPA and as recommended by CEQ Guidelines, which is circulated in draft form in order to obtain the comment or review by other Federal, State and local domestic agencies and the US general public. The final Environmental Impact Statement takes into consideration the comments received on the draft. The required form and content of an Environmental Impact Statement is further defined in §§ 216.5 and 216.6 of these procedures.

(6) *Negative Determination*. A Negative Determination is a formal written document based on a Threshold Decision that a proposed action is not a major action which will have a significant effect on the human environment and is, therefore, an action for which an Environmental Impact Statement or an Environmental Assessment will not be required.

(7) *Negative Declaration*. A Negative Declaration is an official written Agency decision made by an Assistant Administrator which states that the Agency will not develop an Environmental Impact Statement or an Environmental Assessment for an action which the Agency has identified as being normally covered by these procedures. The decision may be based on (i) overriding considerations such as the provision of disaster relief (ii) the fact that a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past, or (iii) the fact that the Agency has previously decided to prepare a programmatic Statement or Assessment covering the activity in question.

(8) *Project Identification Document (PID)*. An internal AID document which initially identifies and describes a proposed project. It is a short paper presenting enough information on the project to demonstrate its relevance to Agency priorities and its practical potential.

(9) *Program Assistance Initial Proposal (PAIP)*. An internal AID document used to initiate and identify proposed non-project commodity import programs. It is analogous to the Project Identification Document.

(10) *Project Review Paper (PRP)*. An internal AID document presented during the analytical stage of a project in conjunction with formulation of the Agency's Congressional Presentation. The PRP identifies major project issues and assures that necessary steps can be agreed upon to examine if the project is feasible and to determine the best possible implementation plan for the project.

(11) *Program Assistance Review Document (PARD)*. An internal AID document used for a more detailed review of an approved Program Assistance Initial Proposal under a non-project commodity import program. It is analogous to the Project Review Paper and contains a section which identifies categories of commodities and provides the justification for the proposed AID financing.

(12) *Project Paper (PP)*. An internal AID document which provides a definitive description and appraisal of the project and particularly, the plan of implementation. Project Papers form the basis for a final decision on whether or not to offer AID funding for a project.

(13) *Program Assistance Approval Document (PAAD)*. An internal AID document approving non-project commodity import program assistance. It is analogous to the Project Paper.

§ 216.2 Applicability of procedures.

These procedures apply to all new programs or activities, including those that may arise in connection with on-going projects, for project assistance, research and commodity procurement. Not every AID activity, however, will be a major action significantly affecting the human environment for purposes of these procedures. For example, the following general classes of activities will not normally require the filing of an Environmental Impact Statement or the preparation of an Environmental Assessment:

(a) Education or training programs not designed to result in activities directly affecting the environment;

(b) Controlled experimentation exclusively for the purpose of research which is confined to small areas and carefully monitored;

(c) Analyses, studies, academic or investigative research, workshops and meetings;

(d) Projects where AID is a minor donor to a multidonor project and there are no potential effects upon the environment of the US or areas outside any nation's jurisdiction;

(e) Document and information transfers;

(f) Contributions to international, regional or national organizations by the US which are not for the purpose of carrying out a specifically identifiable project or projects;

(g) Disaster and emergency relief activities;

(h) US institution building grants, as provided for under Section 211(d) of the Foreign Assistance Act.

§ 216.3 General procedures.

(a) An Initial Environmental Examination will be prepared by the originator of a project concurrently with the Project Review Paper or Program Assistance Review Document or earlier. When Project Review Papers or Program Assistance Review Documents are not utilized, the Initial Environmental Examination will be prepared concurrently with the preparation of the Project Identification Document or Project Assistance Initial Proposal or at the earliest appropriate time.

(b) Based on the Initial Environmental Examination, a Threshold Decision will be specifically recommended in the Project Review Paper, Program Assistance Review Document or Project Identification Document and acted upon at the Bureau or Office level concurrently with approval of the Project Review Paper, Program Assistance Review Document or Project Identification Document. If the Threshold Decision is negative (i.e. an Environmental Assessment or an Environmental Impact Statement is not required), the cognizant Bureau or Office will record this decision and such record will constitute a Negative Determination. If the Threshold Decision based on an Initial Environmental Examination is positive (i.e. a significant environmental impact is likely to occur) then the activity is to be evaluated to determine if an EIS is to be prepared pursuant to Section 216.6 of these procedures. When a Threshold Decision based on an Initial Environmental Examination indicates that an Environmental Assessment is required, the procedures of § 216.5 will be followed and the approved Project Review Paper or equivalent document containing the Initial Environmental Examination will be circulated to selected U.S. Federal agencies with relevant expertise, utilizing the list provided in the CEQ Guidelines. Such agencies will be invited to make written comments within thirty days on the Examination and on matters that should be considered in preparation of the Environmental Assessment. Comments received on environmental aspects from reviewing Federal agencies will be forwarded to the originating project office for consideration in the formulation of the design and implementation of the project and the required Environmental Assessment and will form part of the project file when the project comes forward in the Project Paper stage for final approval.

(c) If the Project Review Paper, Program Assistance Review Document or Project Identification Document is approved and the Threshold Decision positive, the originator of the project will prepare, prior to or concurrently with the Project Paper or Program Assistance Approval Document, an Environmental Assessment or draft Environmental Impact Statement as required. Draft Environmental Impact Statements will be circulated for review and comment as part of the review of Project Papers and as outlined further in § 216.6 of these procedures. Final approval of the Project Paper or Program Assistance Approval Document and the method of implementation will include consideration of the Environmental Assessment or final Environmental Impact Statement as well as other required (non-environmental) analyses. If loans or grants for broad sector activities (e.g. river basin

development, etc.) are proposed, a general or programmatic Environmental Assessment or Environmental Impact Statement consistent with the scope of the proposed loan or grant will be prepared in conjunction with the Project Paper and agreement will be reached with the recipient government that a detailed Assessment will be prepared and considered on each individual project as it is developed and prior to its approval.

(d) Processing and Review Within AID Initial Environmental Examinations, Environmental Assessments and final Environmental Impact Statements will be processed within AID in accordance with the normal AID procedures for other documents. These procedures call for participation in the project review process of technical, legal and country specialists. Environmental Assessments and final Environmental Impact Statements will be reviewed as an integral part of the Project Paper or equivalent. In addition to these normal procedures, Environmental Assessments will be reviewed by the appointed Bureau environmental officer and, periodically, by the Environmental Coordinator who will monitor the Environmental Assessment process. Draft and final Environmental Impact Statements will be reviewed by the Environmental Coordinator and the Office of the General Counsel.

(e) Monitoring: To the extent feasible and relevant, projects and programs for which Environmental Impact Statements ments or Environmental Assessments have been prepared, should be designed to include measurement of any changes in environmental quality, positive or negative, during their implementation. This will require recording of baseline data at the start. To the extent that available data permits, originating offices of AID will formulate systems in collaboration with the recipient nation(s), to monitor such impacts during the life of AID's involvement in the activity.

(f) Revisions: If, after a Threshold Decision is made resulting in a Negative Determination, a project is revised or new information becomes available which indicates that a proposed action might be "major" and its effects "significant", the Negative Determination will be reviewed and revised by the cognizant Bureau and an Environmental Assessment or Environmental Impact Statement will be prepared, if appropriate. Environmental Assessments and Environmental Impact Statements will be amended and processed appropriately if there are major changes in the project or program, or when significant new information becomes available. When ongoing programs are revised to incorporate a change in scope or nature, a determination will be made as to whether such change may have an environmental impact not previously assessed. If so, the procedures outlined above will be followed.

§ 216.4 Responsibilities.

(a) As a general principle, responsibilities for environmental decisions and actions will be similar to normal AID organizational responsibilities so that an environmental awareness will permeate the entire organization and environmental considerations will be weighed with others in an integrated manner at each level of responsibility. Thus each AID official empowered to authorize funds will be responsible to the Administrator for implementing these procedures and obtaining and managing the required resources.

(b) In view of the need for an internal and external focal point for environmental matters, the position of AID Environmental Coordinator has been established in the Office of Science and Technology, Technical Assistance Bureau (TA/OST). This person will serve as the principal environmental affairs coordinator for the entire Agency and will provide policy guidance and professional leadership within AID and will serve as chairman of the AID Committee on Environment and Development. The Environmental Coordinator will also be the principal point of contact on environmental affairs with the Council on Environmental Quality, the Department of State, all other Federal agencies and the public.

(c) The head of each Bureau, Mission and major Office will designate a competent officer to act as coordinator, advisor and principal point of contact for environmental matters within his organizational unit. Those officers located in AID/Washington will also be members of the AID Committee for Environment and Development.

(d) The Committee on Environment and Development will provide advice on major issues, policies or procedures having agency-wide implications.

(e) Central technical offices will provide support and advice to AID Bureaus, Offices, and Missions as requested in their respective areas of expertise. The following Offices are expected to be involved most frequently:

1. Office of Engineering (SER/ENG)
2. Office of Agriculture (TA/AGR)
3. Office of Science and Technology (TA/OST)
4. Office of Commodity Management (SER/COM)
5. Office of Health (TA/H)
6. Office of Urban Development (TA/UD)
7. Office of Nutrition (TA/H)

(f) When required by responsible offices, qualified outside contractors may be employed to assist in preparing Initial Environmental Examinations, Environmental Assessments or Environmental Impact Statements.

§ 216.5 Environmental Assessments (EA).

(a) *General purpose.* The purpose of the Environmental Assessment is to provide Agency and host country decision makers with a comprehensive understanding of the reasonably foreseeable environmental effects of proposed actions and their reasonable alternatives so that the expected benefits of development objectives can be weighed against any adverse short or long-term impacts upon the human environment or any irreversible or irretrievable commitment of resources. The Environmental Assessment will be considered by AID prior to final approval of any activity as outlined in § 216.3 of these procedures.

(b) *Collaboration with Recipient Nation on Preparation.* Collaboration in obtaining data, conducting analyses and considering alternatives will help build an awareness of development-associated environmental problems in less developed countries as well as assist in building an indigenous institutional capability to deal nationally with such problems. Missions, Bureaus and Offices will collaborate with recipient countries to the maximum extent possible, in the development of any Environmental Assessments required and obtain agreement of the recipient country to participate in the preparation of any required Assessment and to consider environmental consequences as set forth therein. In some cases, centrally funded Project Papers are prepared and approved prior to country selection. In such cases, prior agreements, collaboration and specific details of any required Assessments must be deferred until a later date. In many recipient countries, neither baseline data for complete Environmental Assessments or monitoring may be available, nor local personnel with the knowledge required to participate substantively in the Assessments. In these cases, Missions should encourage and be responsive to host-country requests for training or technical assistance. When AID unilaterally considers that there is a reasonable risk of significant adverse effects on the environment from an activity proposed to it for support, and where efforts to encourage the incorporation of appropriate safeguards are unsuccessful, AID reserves the prerogative of declining to participate in the activity.

(c) *Content and Form.*[1] The scope and depth of information and data gathered for Environmental Assessments should be similar to that for economic, technical and other analyses required by AID and must be relevant to the specific environmental issues involved.

(1) Environmental Assessments should include or make reference within the same document to a description of the proposed action, a statement of its purposes, and a description of the environment affected, including information, summary technical data and maps and diagrams where relevant, adequate to permit an assessment of potential environmental impact. Highly technical and specialized analyses and data should be avoided in the body of the draft, but, if required, should be attached as appendices or footnoted with adequate bibliographic references and, if difficult to obtain, a notation of where they are available. In addition to a description of the proposed action and the environment affected, the Environmental Assessment

[1] This section is substantially taken from CEQ Guidelines, Section 1500.8.

should identify and describe further related activities which are intended to be undertaken in the same general area and of substantially the same nature which are promoted and financed by AID or another US Government agency, or where AID assistance is conditioned upon the recipient country's undertaking further related activities in the same general area and of substantially the same nature. The interrelationships and cumulative environmental impacts of the proposed action and other related activities, as described above, must be presented in the Environmental Assessment. The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decision-making (planning, feasibility, design, etc.). In order to ensure accurate descriptions of a proposed action and its alternatives, site visits should be made as appropriate. Population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives should be identified. It is essential that the sources of data used to identify, quantify or evaluate any and all environmental consequences be expressly noted.

(2) The relationship of the proposed action to plans for land and resources use, policies and controls for the affected area and sectoral or national development plans should be examined. Since AID programs and projects are undertaken only at the request of and in collaboration with the recipient country, there should be no conflict with the objective and specific terms of LDC approved or proposed land use plans, policies and controls, if any, for the area affected.

(3) The reasonably foreseeable impact of the proposed action on the human environment must be assessed.

(i) Identification and quantification of such impacts requires an assessment of the positive and negative effects of the proposed action as it affects the environment of the recipient country or neighboring countries as appropriate. The attention given to different environmental factors will vary according to the nature, scale, and location of the proposed action. Among factors to consider should be the reasonably foreseeable effect of the action on such aspects of the environment as those listed in § 216.1(c)(3) of these procedures. Primary attention should be given in the Environmental Assessment to discussing those factors most evidently impacted by the proposed action.

(ii) Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the Assessment. Many major Agency actions, in particular those that involve the construction or funding of infrastructure investment (e.g., irrigation projects, rural water supply systems, rural access roads, water resource development projects, etc.) could stimulate or induce secondary effects in the form of associated investments, introduction of disease vectors, and changed patterns of social and economic activities. Such secondary effects, through their impacts on human health and existing community facilities and activities, through inducing new facilities and activities, or through changes in natural conditions, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population movement and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated if expected to be significant and an assessment made of the effect or any possible change in population patterns or growth upon the resource base, including land use, water, and public services of the area in question.

(4) Reasonable alternatives to the proposed action including, where relevant, those not within the existing authority of AID should be investigated. The sponsoring Office or Bureau should study, develop and describe appropriate alternatives to the recommended course of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. A rigorous exploration and objective evaluation of reasonably foreseeable environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, is essential. Sufficient analysis of such alternatives and their environmental benefits, costs and risks should accompany the proposed action through the review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of taking no action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts (e.g., nonstructural alternatives to flood control programs); alternatives related to different designs or details of the proposed action which would present different environmental impacts (e.g., cooling ponds versus cooling towers for a power plant); alternatives that will significantly conserve energy; alternative measures to provide for compensation of fish and wildlife losses including the acquisition of land, waters, and interests therein. In each case, the analysis should be sufficiently detailed to reveal the comparative evaluation of the environmental benefits, costs and risks of the proposed action and each reasonable alternative.

(5) Any reasonably foreseeable adverse environmental effects which cannot be avoided (such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health or other adverse consequences) should be identified. This should be a brief section summarizing in one place those effects that are adverse and unavoidable under the proposed action. Included for purposes of contrast should be a clear statement of how other avoidable adverse effects discussed in this section will be mitigated.

(6) Except for provision of some direct disaster relief and short-term balance of payments or budgetary assistance, AID's activities are normally to provide long-term benefits. However, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity should be explored. This section should contain a brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options. In this context, short-term and long-term do not refer to any fixed time periods, but should be viewed in terms of the environmentally significant consequences of the proposed action.

(7) Any irreversible and irretrievable commitments of natural or cultural resources that would be involved in the proposed action should it be implemented should be identified. This requires the sponsoring Office or Bureau to identify unavoidable impacts such as those listed in paragraph five of this section and the extent to which the action irreversibly curtails the range of potential uses of the environment.

(8) An indication of what other interests and considerations of US, AID or LDC policy are thought to offset the adverse environmental effects of the proposed action. The Environmental Assessment should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects. Where cost-benefit analyses of a proposed action are prepared they should be attached and should clearly indicate the extent to which environmental costs have not been reflected in such analyses.

(9) In developing the above points, every effort should be made to convey the required information succinctly, in a form easily understood, giving attention to the substance of the information conveyed rather than to the particular form, length or detail of the Assessment. Each of the above points, for example, need not always occupy a distinct section if it is otherwise adequately covered in discussing the impact of the proposed action and its alternatives—items which should normally be the focus of the statement.

(10) Environmental Assessments should indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in their preparation, including any cost-benefit analyses prepared.

In the case of documents not likely to be easily accessible (such as internal studies or reports), the Environmental Assessment should indicate how such information may be obtained.

(11) To the extent required to obtain a reasoned analysis, each Assessment should be prepared utilizing a systematic interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision-making which may have an impact on man's environment. If required disciplines are not available within AID, appropriate use of relevant US Government and local LDC agencies or the professional services of universities and outside consultants should be made. The interdisciplinary approach should not be limited to the preparation of the Environmental Assessment, but should also be used in the early planning and design stages of the proposed action and in its evaluation. Early application of such an approach should help assure a systematic evaluation of reasonable alternative courses of action and their potential social, economic, and environmental consequences as well as mitigating detrimental effects of the chosen project or activity.

(12) Broad program Assessments may be required in order to assess the environmental effects of a number of individual actions and their cumulative environmental impact in a given country or geographic area, or the environmental impacts that are generic or common to a class of agency actions, or other activities which are not country-specific. In these cases, a single, programmatic Assessment will be prepared in AID/Washington and circulated to appropriate overseas Missions, host governments, and to interested parties within the United States. Based upon consultation with the Committee on Environment and Development, the Environmental Coordinator shall recommend to the Administrator the subjects and appropriate preparing Offices for such Agency-wide programmatic Assessments. Decisions on the need for programmatic Environmental Assessments on actions relating to a specific country or region will be made by the cognizant Bureau or Office head in consultation with the Environmental Coordinator. To the extent practicable, the form and content of the programmatic Environmental Assessment will be the same as for project Assessments. Subsequent Environmental Assessments on major individual actions will be necessary where such follow-on or subsequent activities may have significant environmental impacts on specific countries where such impacts have not been adequately evaluated in the programmatic Environmental Assessment.

(13) In a situation where an analysis indicates that potential effects may extend beyond the national boundaries of a recipient country and adjacent foreign nations may be affected, AID will urge the recipient country to consult with its neighbor(s) in advance of project approval and to negotiate mutually acceptable accommodations.

(14) Environmental Assessments will not normally include material classified or administratively controlled. However, there may be situations where environmental aspects cannot be adequately discussed without the inclusion of such material. The handling and disclosure of classified or administratively controlled material shall be governed by 22 CFR Part 9. Those portions of an Environmental Assessment which are not classified or administratively controlled will be made available to persons outside the Agency as provided for in 22 CFR Part 212.

(d) *Consultation and Review.* When Environmental Assessments are prepared on activities carried out within or focused on specific LDCs consultations will be held between AID staff and the host government both in the early stages of preparation and on the results and significance of the completed Assessment before the project is authorized. Missions will encourage the host government to make the Environmental Assessment available to the general public of the recipient country. If Environmental Assessments are prepared on activities which are not country-specific, the Assessment will be circulated by the Environmental Coordinator to AID's overseas Missions and interested LDC governments for information, guidance and comment, and will be made available in the US to interested parties.

§ 216.6 Environmental impact statements (EIS).

Environmental Impact Statements (EISs) will be prepared and circulated in accordance with section 102(2)(c) of NEPA, as amplified by the CEQ Guidelines, when major agency actions significantly affect:

(a) The global environment or areas outside the jurisdiction of any nation (e.g., the oceans);

(b) The environment of the United States; or

(c) As a matter of policy, other aspects of the human environment at the discretion of the Administrator.

The content and form of the draft and final Environmental Impact Statement will generally follow Section 1500.8 of the Guidelines, but will take into account the special considerations and concerns of AID, such as those set forth in § 216.5 of these procedures. Circulation of an Environmental Impact Statement in draft form will precede approval of a Project Paper or equivalent and comments from such circulation will be considered before final project authorization as outlined in § 216.3 of these procedures. The draft Environmental Impact Statement will also be circulated via the Missions to affected LDC governments for information and comment. Draft Environmental Impact Statements will be made available for comment to US Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, and to public and private organizations and individuals for not less than forty-five (45) days (see Section 1500.9 (b), (c), (d), and (f) of CEQ Guidelines for details); and notice of the draft Environmental Impact Statements availability will be published in the Federal Register. Cognizant Bureaus and Offices will submit these drafts for circulation via the AID Environmental Coordinator who will have the responsibility for coordinating all such communications with persons outside AID. Any comments received by the Environmental Coordinator will be forwarded to the originating Bureau or Office for consideration in final policy decisions and the preparation of a final Environmental Impact Statement. All such comments will be attached to the final Statement, and those responsible comments not adequately discussed in the draft Statement will be appropriately dealt with in the final Statement. Copies of the final Environmental Impact Statement, with comments attached, will be sent by the Environmental Coordinator to CEQ and to all other Federal, state and local agencies and private organizations that made substantive comments on the draft, including affected LDC governments. Where emergency circumstances or considerations of foreign policy make it necessary to take an action without observing the provisions of Section 1500.11 of the CEQ Guidelines[2], or when there are overriding considerations of expense to the US or foreign governments, the originating Office will advise the Environmental Coordinator who will consult with Department of State and CEQ concerning appropriate modification of review procedures.

§ 216.7 Public hearings.

(a) In most instances AID will be able to gain the benefit of public participation in the impact statement process through circulation of draft statements and notice of public availability in CEQ publications. However, in some cases the Administrator may wish to hold public hearings on draft Environmental Impact Statements. In deciding whether or not a public hearing is appropriate, Bureaus in conjunction with the Environmental Coordinator should consider:

(1) The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of the resources involved;

(2) The degree of interest in the proposal as evidenced by requests from the public and from Federal, state and local authorities, and private organizations and individuals, that a hearing be held;

(3) The complexity of the issue and likelihood that information will be presented at the hearing which will be of assistance to the Agency; and

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hear-

[2] Section 1500.11 of CEQ Guidelines outlines requirements for transmittal of statements to CEQ, minimum periods for review, etc.

ings, meetings with citizen representatives, and/or written comments on the proposed action.

(a) If public hearings are held, draft Environmental Impact Statements to be discussed should be made available to the public at least fifteen (15) days prior to the time of the public hearings, and a notice will be placed in the FEDERAL REGISTER giving the subject, time and place of the proposed hearings.

§ 216.8 Records and reports.

Each Agency Bureau will maintain a list of activities for which Environmental Assessments and Environmental Impact Statements are being prepared and for which Negative Determinations and Declarations have been made and will revise the list quarterly and provide copies to the Environmental Coordinator for transmittal to CEQ. Final Project Papers containing the Environmental Assessment will be forwarded to CEQ as soon as they are available. Copies will also be available to interested Federal agencies upon request. The cognizant Bureau will maintain a permanent file (which may be part of its normal project files) of Statements, Assessments, Determinations and Declarations which will be available to the public under the Freedom of Information Act except for actions covered by § 216.6(d)(14) of these procedures.

[FR Doc.76-18997 Filed 6-28-76;3:36 pm]

CHAPTER IX—FOREIGN SERVICE GRIEVANCE BOARD REGULATIONS

[Dept. Reg. 108.722]

Establishment of Chapter

On June 7, 1976 a notice of proposed rulemaking was published in the FEDERAL REGISTER (41FR22828) establishing the internal organization of the Foreign Service Grievance Board, and prescribing procedures governing the conduct of its proceedings.

Interested persons were invited to submit written comments, suggestions, or objections regarding the proposed regulations not later than June 22, 1976. After consideration of all revelant matter presented, the regulations for Chapter IX are hereby adopted as set forth below.

Effective date: These regulations are effective June 23, 1976.

Dated: June 23, 1976.

ALEXANDER B. PORTER,
Chairman,
Foreign Service Grievance Board.

Part
901 General.
902 Organization.
903 Filing and withdrawal of grievances.
904 Jurisdiction.
905 Hearings.
906 Procedures when hearing is not held.
907 Decision making.
908 Miscellaneous.

PART 901—GENERAL

Subpart A—Purpose and Scope

Sec.
901.1 Purpose and scope.

Subpart B—Meanings of Terms as Used in This Chapter

901.10 Act.
901.11 Agency.
901.12 Board.
901.13 Executive secretary.
901.14 Grievant.
901.15 Grievance.
901.16 Party.
901.17 Record of proceedings.
901.18 Representative.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94-141.

Subpart A—Purpose and Scope

§ 901.1 Purpose and scope.

The regulations contained in this chapter establish the internal organization and operations of the Foreign Service Grievance Board and prescribe its procedures in:

(a) Determining its jurisdiction over grievances submitted to it for adjudication;

(b) Compiling a record in such grievances;

(c) Mediating such grievances;

(d) Conducting hearings in such grievances, when required or deemed necessary; and

(e) Deciding grievances or otherwise disposing of them, so as to insure a full measure of due process and their just and fair resolution.

Subpart B—Meanings of Terms as Used in This Chapter

§ 901.10 Act.

"Act" means the Foreign Service Act of 1946 (22 U.S.C. 1037), as amended.

§ 901.11 Agency.

"Agency" means the foreign affairs agency—the Department of State, the Agency for International Development, or the U.S. Information Agency—employing the grievant or having control over the act or condition forming the subject matter of the grievance.

§ 901.12 Board.

"Board" means the Foreign Service Grievance Board, including any designated panel or member thereof.

§ 901.13 Executive secretary.

"Executive Secretary" means the executive secretary of the board.

§ 901.14 Grievant.

"Grievant" means any Foreign Service officer or employee of the Department of State, U.S. Information Agency, or Agency for International Development, who is a citizen of the United States, or for the purposes of § 901.15 (b) and (c), a former officer or employee of the Service, or in the case of death of the officer or employee, a surviving spouse or dependent family member of the officer or employee.

§ 901.15 Grievance.

"Grievance" means (a) any act or condition subject to the control of the Department of State, U.S. Information Agency, or Agency for International Development, (hereinafter referred to as the foreign affairs agency or agencies) which is alleged to deprive the grievant of a right or benefit authorized by law or regulations, or is otherwise a source of concern or dissatisfaction to the grievant. Grievances shall include but not be limited to complaints against separation of an officer or employee allegedly contrary to law or regulation or predicated upon alleged inaccuracy (including inaccuracy resulting from omission of any relevant and material document), or falsely prejudicial character of any part of the grievant's official personnel record; other alleged violation, misinterpretation or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the grievant's employment or career status; allegedly wrongful disciplinary action against an employee constituting a reprimand or suspension from official duties; dissatisfaction with any matter subject to the control of the agency with respect to the grievant's physical working environment; alleged inaccuracy, error, or falsely prejudicial material in the grievant's official personnel file; and action alleged to be in the nature of reprisal for an employee's participation in grievance procedures; but grievances shall not include complaints against individual assignments or transfers of Foreign Service officers or employees which are ordered in accordance with law and regulation, judgments of Selection Boards pursuant to section 623 of the Act or of equivalent bodies in ranking Foreign Service officers and employees for promotion on the basis of merit or judgments in examinations prescribed by the Board of Examiners pursuant to section 516 or 517 of the Act, termination of time limited appointments pursuant to 22 U.S.C. 929 and 1008, and the pertinent regulations prescribed by the employing agency, or any complaints or appeals where a specific statutory appeal procedure exists. Other matters not specified in this paragraph may be excluded as grievances only by written agreement of the agencies and the exclusive representative organization(s).

(b) Except as provided in paragraph (c) of this section, when the grievant is a former officer or employee or a surviving spouse or dependent family member, "grievance" shall mean a complaint that an allowance or other financial benefit has been denied arbitrarily, capriciously, or contrary to applicable law or regulation.

(c) When the grievant is a former officer who was involuntarily retired pursuant to sections 633 and 634 of the Act within six years prior to November 29, 1975, "grievance" shall mean a complaint that such involuntary retirement violated applicable law or regulation effective at the time of the retirement, or that the involuntary retirement was predicated directly upon material contained in the grievant's official personnel file alleged to be erroneous or falsely prejudicial in character.

For the purposes of these regulations, the written complaint concerning any of the acts or conditions specified above may be referred to as the "grievance".

§ 901.16 Party.

"Party" means (a) the grievant; or (b) the agency or agencies having control over the grievance.

§ 901.17 Record of proceedings.

"Record of Proceedings" means the case file maintained by the board on each grievance.

§ 901.18 Representative.

"Representative" means in the case of an agency, the official(s), and in the case of the grievant, the individual(s) or organization(s) identified in writing to the board as assisting in the presentation of the case.

PART 902—ORGANIZATION

Sec.
902.1 Chairman and deputy chairman.
902.2 Board operations.
902.3 Board staff.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94–141.

§ 902.1 Chairman and deputy chairman.

The Chairman presides over meetings of the board. The Chairman shall select one of the board members as his deputy. In the absence of the Chairman, the Deputy Chairman, or in his absence, another member designated by the Chairman, may act for him.

§ 902.2 Board operations.

The board may operate either as a whole, or through panels of three or more members, or through individual members designated by the Chairman.

(a) When operating as a whole, the board may not act in the absence of a quorum. A majority of the members shall constitute a quorum. These regulations, any amendments thereto, and board policies adopted pursuant to section 908.4 shall be adopted only by the board operating as a whole.

(b) Board panels and presiding members shall be designated at the Chairman's discretion subject only to the provisions of section 905.3.

§ 902.3 Board staff.

The Chairman shall select the board's executive secretary and other staff provided for in the Act. The executive secretary and staff shall be responsible only to the board through the Chairman.

PART 903—FILING AND WITHDRAWAL OF GRIEVANCES

Sec.
903.1 Filing.
903.2 Waiver of time limits.
903.3 Record of proceedings.
903.4 Service.
903.5 Acknowledgment.
903.6 Withdrawal.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94–141.

§ 903.1 Filing.

Grievances submitted to the board shall be in writing, and shall explain the nature of the grievance and of the remedy sought; shall contain all the documentation furnished to the agency under 3 FAM 664.4–3 and the agency's final review and shall be timely filed in accordance with the provisions of 3 FAM 666.1.

§ 903.2 Waiver of time limits.

Upon a showing of good cause, the board may waive the time limits for the filing of a grievance contained in 3 FAM 666.1. Grievances granted such waivers then will be considered as having been timely filed in accordance with this section, and will be considered for jurisdiction in accordance with the provisions of section 904.

§ 903.3 Record of proceedings.

Upon receipt of the grievance, a record of proceedings shall be established, and the grievance and related material received or obtained by the board shall be placed in it. The record of proceedings shall be held in confidence by the board and only the parties and their representatives shall have access to it.

§ 903.4 Service.

Any party or representative placing a document in the record in connection with a grievance shall serve a copy on the other parties and representatives. The board shall serve copies of its correspondence concerning the grievance on the parties and their representatives.

§ 903.5 Acknowledgment.

Each grievance received shall be acknowledged in writing by the executive secretary of the board within five working days of its receipt. If in the judgment of the executive secretary additional documentation or information must be obtained from either the grievant or an agency for an understanding of the grievance, he may request such materials at the time of acknowledgment.

§ 903.6 Withdrawal.

Grievances may be withdrawn at any time by means of a letter from the grievant or his representative to the board stating that the grievance is withdrawn. Grievances may be administratively determined by the board to have lapsed when the grievant and his representatives fail to respond to written board inquiries or otherwise pursue the case for a period of three months. The board may permit the reopening of lapsed cases upon a showing of good cause.

PART 904—JURISDICTION

Sec.
904.1 General.
904.2 Determinations.
904.3 Appeals.
904.4 Questions of relevancy, materiality, and access.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94–141.

§ 904.1 General.

The board's jurisdiction extends to any grievance as defined in § 901.15. Its jurisdiction is subject to certain limitations set forth in Sections 692(1) (B), (C) and (D), and 692(3) and 693(a) of the Act. (See also 3 FAM 660–668.)

§ 904.2 Determinations.

Grievances which the agencies, during their final review, have not held to be excluded from the board's jurisdiction will be presumed to be within the jurisdiction of the board. The board shall resolve questions of jurisdiction prior to resolving the merits of the grievance. Whether questions of jurisdiction are to be resolved prior to or after the board has compiled a record or held a hearing on the merits of the grievance is a matter which the board shall determine on a case-by-case basis depending upon the circumstances of each case.

§ 904.3 Appeals.

Where questions of jurisdiction are decided prior to the final compilation of a record or the holding of a hearing, decisions by the board that a grievance, or any part thereof, is outside its jurisdiction may be appealed to the board within 30 days of the receipt of the written notification of the board's decision. Such an appeal shall be in writing and shall address itself to the Board's decision. The appeal, together with any additional material or evidence furnished by either party as being relevant, will be referred along with the record of proceedings to the board for determination in accordance with § 904.1.

§ 904.4 Questions of relevancy, materiality, and access.

Requests to the board for determination of questions of the relevancy and materiality of documents and other evidence, and requests for rulings on access to classified materials, in connection with jurisdictional issues being considered under this section, shall be made in accordance with the provisions of § 906.3.

PART 905—HEARINGS

Sec.
905.1 When ordered.
905.2 Notification.
905.3 Hearing panels and members.
905.4 Prehearing conferences.
905.5 Powers of presiding member.
905.6 Conduct of hearing.
905.7 Witnesses.
905.8 Failure of party to appear.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94–141.

§ 905.1 When ordered.

The board shall conduct a hearing, at the request of the grievant, in any case which involves disciplinary action or a grievant's retirement from the Service under Section 633 of the Act, or which in the judgment of the board can best be resolved by a hearing or by presentation or oral argument.

§ 905.2 Notification.

When the board orders a hearing, the executive secretary shall so notify the parties promptly in writing. The parties shall be given no less than 25 working days notice of the date and place selected by the board for the hearing. An earlier date may be set if the parties waive their rights to such notice in writing.

§ 905.3 Hearing panels and members.

Hearings held at a site outside the continental limits of the United States may be presided over by the Chairman, or by a panel or member of the board designated by the Chairman. Unless the board, the agency and the grievant agree to a hearing before a single presiding member designated by the Chairman, all hearings shall be held before a panel of at least three members designated by the Chairman. Each panel shall select one of its members as presiding member.

§ 905.4 Prehearing conferences.

The presiding member may, in his or her discretion, order a prehearing conference (which may be presided over by another member) for the purpose of considering:

(a) The simplification or clarification of the issues;

(b) The serving of interrogatories;

(c) Possible stipulations, admissions, agreements on documents, matters already on record, or similar agreements which will avoid unnecessary proof;

(d) Limitations on the numbers of witnesses, and the avoidance of repetitious testimony;

(e) The possibility of agreement disposing of the grievance, and

(f) Such other matters as may aid in the disposition of the grievance.

The results of the conference shall be reduced to writing by the board and made a part of the record of proceedings.

§ 905.5 Powers of presiding member.

In connection with the hearing, the presiding member shall, as appropriate:

(a) Fix the time and place of the hearing;

(b) Order further conferences for the simplification of the issues or any other purpose;

(c) Regulate the course of the hearing;

(d) Administer oaths and affirmations;

(e) Dispose of procedural requests, and similar matters;

(f) Rule on offers of proof, receive or direct the production of relevant and material evidence, and exclude any irrelevant, immaterial, or unduly repetitious evidence;

(g) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing;

(h) Authorize and set the time for the filing of briefs, or other documents;

(i) Grant continuances, and extensions of time;

(j) Reopen the record; and

(k) Take any other action in the course of the proceedings consistent with the purpose of this part.

§ 905.6 Conduct of hearing.

(a) *Authorized attendance.* The grievant, and as determined by the board, a reasonable number of representatives of the grievant's own choosing and a reasonable number of representatives of the foreign affairs agency concerned, are entitled to be present at the hearing. The presiding member, after considering the views of the parties and any other persons connected with the grievance, may permit attendance by others at the hearing.

(b) *Procedure.* Hearings shall be conducted by the presiding member so as to ensure a full and fair proceeding, and the presiding member shall not be limited by the legal rules of evidence, as determined under section 556 of Title 5 of the U.S. Code. However, the presiding member shall exclude irrelevant, immaterial, and unduly repetitious evidence.

(c) *Evidence.* Subject to the presiding member's rulings on the relevancy, materiality, and repetitious nature of evidence, the parties may offer such evidence, including interrogatories, depositions, and agency records as they desire. They also shall produce such additional evidence as the presiding member shall consider relevant and material. Where deemed appropriate by the board, the grievant may be supplied only with a summary or extract of classified material.

(e) *Testimony.* All testimony at a hearing shall be by oath or affirmation.

(f) *Transcript.* In all hearings, a *verbatim* transcript shall be prepared and made a part of the record of proceedings.

§ 905.7 Witnesses.

(a) *General.* The parties and the board have the right to present and cross-examine witnesses. Upon application to the board, the presiding member may permit or order a deposition to be taken, under oath or affirmation, of a witness.

(b) *Notice.* Both the grievant and the agency will give prior written notice to the board and each other of the identity of their witnesses and of the intended scope of their testimony to the extent that this is known in advance. If the presiding member wishes to call witnesses, he will notify the parties of their identity and the intended scope of their testimony. The parties are responsible for notifying their witnesses, and for arranging for their appearance at the time and place set for the hearing; except that, upon request of the board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing, or by deposition, any witness under the control, supervision, or responsibility of the agency. In any case in which the board determines that the presence of such witness at the hearing is required for just resolution of the grievance, the witness shall be made available at the hearing.

(c) *Examination.* Witnesses called by any party shall be subject to examination by the other party, or their representative(s), and the board. Witnesses called by the board shall be subject to examination by the parties, and their representative(s).

§ 905.8 Failure of party to appear.

The hearing may proceed in the absence of any party who without good cause, after due notice, fails to be present or fails to obtain an adjournment.

PART 906—PROCEDURE WHEN HEARING IS NOT HELD

Sec.
906.1 General.
906.2 Other settlement.
906.3 Rulings on materials.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94-141.

§ 906.1 General.

In the case of a grievance which, in the board's judgment, may be resolved without a hearing, the board may request in writing that specified documents or other evidence be furnished to it and/or may direct the executive secretary or his designee from the staff to obtain such additional documents or other evidence as may be necessary to understand and decide the grievance. Copies of any such written request for additional documents or evidence will be sent to the parties and their representatives. When a staff member is assigned to obtain such evidence, the parties and their representatives will be notified in writing of the name of the person or persons so assigned. The staff member shall not participate or advise in the board's decision.

Each party will be offered the opportunity to review and to supplement, by written submissions, the record of proceedings, prior to the Board's closing of the record. The board shall then consider the grievance and make a decision on its disposition, which may include the ordering of a hearing in accordance with § 905. The board's decision shall be based exclusively on the record of proceedings, and otherwise be made in accordance with the provisions of section 907.

§ 906.2 Other settlement.

When a hearing is not contemplated, the board may assign the executive secretary or his designate from the staff to explore with the parties the possibilities of mediating or otherwise settling the grievance. With the consent of the parties, the staff member so assigned may seek to mediate or otherwise settle the grievance.

§ 906.3 Rulings on materials.

In grievances being considered in accordance with this section, all requests to the board: (a) for rulings on the relevancy and materiality of proposed interrogatories, evidence and other documentation; (b) for authorization for the despatch of interrogatories; (c) and for a grievant's access to classified material shall be submitted in writing, with a copy to the other party. After the views of the other party have been obtained in writing, the request, with the record of proceedings, shall be referred to the board for decision. The board may obtain or permit joint oral argument from the parties and the representatives on such requests.

PART 907—DECISION MAKING

Sec.
907.1 Basis.
907.2 Action by board.
907.3 Board orders.
907.4 Board recommendations.
907.5 Other decision.
907.6 Summaries of board decisions.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94–141.

§ 907.1 Basis.

Decisions of the board shall be made in accordance with section 692(12) of the Act.

§ 907.2 Action by board.

Matters of fact will be decided by the board member or members who either conducted the hearing; or, in the case of grievances which were not the subject of a hearing, who were assigned by the Chairman to decide the case. The board will issue a written decision setting forth its findings of fact and reasons for its decision.

§ 907.3 Board orders.

Where the board's decision imposes action on an agency under the provisions of section 692 (13 of the Act the board's decision shall be in the form of a remedial order addressed to the designated official of the agency.

§ 907.4 Board recommendations.

Where the board's decision is a recommendation under the provisions of section 692 (14) of the Act, it shall be directed to the head of the agency.

§ 907.5 Other decision.

Where the board's decision requires no action by an agency, it shall be in the form of a memorandum.

§ 907.6 Summaries of board decisions.

The board may, from time to time, issue such summaries of its decisions as it may consider necessary to permit the agencies, the exclusive representative organization(s), and the officers and employees of the Service to become aware of the general nature of the cases it has received and their manner of disposition, without invading the privacy of the grievants.

PART 908—MISCELLANEOUS

Sec.
908.1 Recognition of others with a connection to the grievance.
908.2 Requests to reopen cases.
908.3 Suspension of agency actions.
908.4 Board policy statements.
908.5 Representatives and spokesmen.
908.6 Service of communications.

AUTHORITY: Sec. 692(2)(B) of the Foreign Service Act, as amended (22 U.S.C. 1037); Pub. L. 94–141.

§ 908.1 Recognition of others with a connection to the grievance.

An individual, an agency, or an exclusive representative organization may request recognition by the board as having a connection with the grievance. The board, after obtaining the views of the parties, may grant such recognition upon a showing of good cause.

§ 908.2 Requests to reopen cases.

Cases which have been decided may be reopened by the Board only upon the presentation of newly discovered or previously unavailable material evidence not previously considered.

§ 908.3 Suspension of agency actions.

If the board determines that the agency is considering any action of the character of a separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the board, and that such action should be suspended, the board shall notify the agency of its determination and direct the suspension of such action pending the board's decision of the grievance.

§ 908.4 Board policy statements.

The board may establish and publish its policies on matters related to its operations and procedures.

§ 908.5 Representatives and spokesmen.

The grievant and the agency may have reasonable numbers of representatives as determined by the board to assist in the presentation of their cases. The board may require the parties to designate one of their representatives as principal spokesman.

§ 908.6 Service of communications.

Copies of all communications between a party and the board will be served on the other party, including representative(s), and it is the responsibility of the initiator of the correspondence to insure that the required copies are provided.

[FR Doc.76–18940 Filed 6–29–76;8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 916]

NECTARINES GROWN IN CALIFORNIA

Proposed Rulemaking

This notice invites written comment relative to a proposed amendment that would continue Nectarine Regulation 8 (§ 916.350; 41 FR 24698) indefinitely. Said regulation will expire on August 1, 1976, unless extended. The regulation specifies certain container labeling and pack requirements for shipments of California Nectarines and is effective under the marketing agreement and Order No. 916.

The proposed amendment was submitted by the Nectarine Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916); 41 FR 24698, which regulate the handling of Nectarines grown in California. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

All persons who submit written data, views, or arguments for consideration in connection with Nectarine Regulation 8, as published in the FEDERAL REGISTER June 18, 1976 (41 FR 24698) or the proposed amendment published herein, shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112A, Washington, D.C. 20250, not later than July 16, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Under the proposal, the provisions of § 916.350(b) preceding subparagraph (1) thereof (41 FR 24698) would be revised to read:

§ 916.350 Nectarine Regulation 8.

* * * * *

(b) On and after August 2, 1976, no handler shall handle any package or container of any variety of Nectarines except in accordance with the following terms and conditions:

* * * * *

Dated: June 25, 1976.

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

[FR Doc.76-18973 Filed 6-29-76;8:45 am]

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Proposed Rulemaking

This notice invites written comment relative to a proposed amendment that would continue Plum Regulation 5 (§ 917.419; 35 F.R. 7064, 40 FR 20064; 41 FR 24577) indefinitely. Said regulation will expire on August 1, 1976 unless extended. The regulation specifies certain pack and marking requirements for shipments of fresh California plums and is effective under the marketing agreement and Order No. 917.

The proposed amendment was submitted by the Plum Commodity Committee, established pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528) which regulate the handling of fresh pears, plums, and peaches grown in California. This is a regulatory program effective under the Agricultural Marketing Agreement Act of 1937, as amended (6 U.S.C. 601–674).

All persons who submit written data, views, or arguments for consideration in connection with Plum Regulation 5, as published in the FEDERAL REGISTER on June 17, 1976, (41 FR 24577) or the proposed amendment published herein, shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112A, Washington, D.C. 20250, not later than July 16, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Under the proposal, the provisions of Plum Regulation 5 (§ 917.419; 35 FR 7064; 40 FR 20064; 41 FR 24577 are amended by revising paragraph (a) thereof by changing the effective period from "During the period June 9, 1976 through August 1, 1976," to "On and after August 2, 1976." As amended said paragraph (a) and subparagraphs (1), (3), (5), (6) and (7) thereof would read as follows:

§ 917.419 Plum Regulation 5.

(a) *Order.* On and after August 2, 1976, no handler shall ship any package or container or any variety of plums except in accordance with the following terms and conditions:

(1) Such plums, when shipped in closed packages or containers, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack:

* * * * *

(3) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the name "plums" and the name of the variety if known or, when the variety is not known, the words "unknown variety";

* * * * *

(5) Each package or container of loose-fill, loose-pack, or tight-fill plums (not packed in rows) other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight."

(6) Each bulk bin container of loose-filled or loose-packed plums shall contain not less than 400 pounds, net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container of consumer packages of plums and each individual consumer package of plums shall bear, in plain sight and plain letters, the net weight of the contents.

* * * * *

Dated June 25, 1976.

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

[FR Doc.76-18974 Filed 6-29-76;8:45 am]

[7 CFR Part 923]

SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Expenses and Fixing of Rate of Assessment for the 1976–77 Fiscal Period

This notice invites written comment relative to proposed expenses of $26,822 and rate of assessment of $0.60 per ton of cherries to support the activities of the Washington Cherry Marketing Committee for the 1976–77 fiscal period under Marketing Order No. 923.

Consideration is being given to the following proposals submitted by the Washington Cherry Marketing Committee, established under the market agreement and Order No. 923 (7 CFR Part 923) as the agency to administer the provisions thereof. Said agreement and order regulate the handling of fresh sweet cherries grown in certain designated counties in the State of Washington and are effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposals are as follows:

(a) That expenses which are reasonable and likely to be incurred by said committee, during the period April 1, 1976, through March 31, 1977, will amount to $26.822.

(b) That there be fixed, at $0.60 per ton of sweet cherries, the rate of assessment payable by each handler in accordance with § 923.41 of the aforesaid marketing agreement and order.

All persons who submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C., 20250, not later than July 16, 1976. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: June 24, 1976.

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

[FR Doc.76-18972 Filed 6-29-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 2]

[Docket No. 76N-0006]

ENFORCEMENT POLICY, PRACTICES AND PROCEDURES

Recall Policy and Procedures

The Food and Drug Administration (FDA) is proposing regulations describing the policies and procedures FDA follows, and that regulated firms should follow, in the conduct of product recalls. Public comments on the proposed regulations may be submitted to the Hearing Clerk by August 30, 1976.

In the FEDERAL REGISTER of June 15, 1971 (36 FR 11514), the Commissioner of Food and Drugs amended 21 CFR Part 3 by adding new § 3.85 *Revision of procedures for recall of products from the market* (21 CFR 3.85). This statement of policy described in broad terms the policy of FDA regarding the removal of violative products from the market. Subsequently, the Commissioner concluded that regulations were needed to set forth clearly procedures for initiating, conducting, and monitoring recalls and that such regulations should be published as a proposal in the FEDERAL REGISTER with opportunity for public comment.

Following the issuance of § 3.85, FDA instituted major changes in its recall policy and procedures. Because § 3.85 no longer reflected current recall policy, that section was subsequently revoked by an order published in the FEDERAL REGISTER of October 5, 1973 (38 FR 27592). The order of October 5, 1973 also stated that the interim policy and procedures on recalls would be contained in the FDA Regulatory Procedures Manual, Chapter 5-00, and that regulations governing agency recall policy and procedures were being developed. This latter effort has resulted in the proposed regulations that are the subject of this notice. The regulations proposed in this notice do not apply to electronic products subject to the Radiation Control for Health and Safety Act (42 U.S.C. 263b through 263n). Pending issuance of final regulations on this proposal, the FDA Regulatory Procedures Manual, Chapter 5-00, and Compliance Policy Guide, No. 7153.07, will govern the agency's handling of recalls. A notice of availability of these documents was published in the FEDERAL REGISTER of February 26, 1976 (41 FR 8408).

LEGAL AUTHORITY

FDA has the responsibility of protecting public health by assuring that products subject to the laws it administers are manufactured, shipped, and stored in accordance with current good manufacturing practice and are safe, effective (or functional or wholesome), and properly labeled. In carrying out this responsibility, FDA, among other things, inspects regulated firms and samples, tests, and otherwise evaluates their products to determine if they are in compliance with the law. One of the agency's main responsibilities is the removal from commerce of products that are not in compliance with the law. FDA has the statutory authority to initiate seizure of violative products. In addition, violations of the law may be enjoined and violators prosecuted.

Manufacturers and distributors are likewise responsible for assuring that their products comply with the law. As stated by the Supreme Court in *United States* v. *Park*, 421 U.S. 658 (1975):

> The [Federal Food, Drug, and Cosmetic] Act imposes not only a positive duty to seek out and remedy violations when they occur but also, and primarily, a duty to implement measures that will insure that violations will not occur. The requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding, and perhaps onerous, but they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them.

Most manufacturers and distributors of products subject to the jurisdiction of FDA have long recognized their responsibility to market safe and properly labeled products and to take measures to protect the public from adulterated and misbranded products that have already reached the marketplace. Indeed, it is not unusual for a firm, when it learns that a distributed product is defective, to take steps to correct the situation by removing the product from commerce or by remedying the defect. The Commissioner generally regards such responsible, voluntary action as an acceptable alternative to an agency-initiated seizure of the defective product.

Most firms honor FDA requests to recall violative foods, drugs, devices, cosmetics, or biologics. Such action, whether the result of a specific request by FDA or initiated by the firm, may be prompted by several motives: The firm's sense of responsibility, its obligation to prevent harm to the public health and welfare, its desire to avoid an FDA-initiated legal action, or its desire to minimize civil liability. Whatever the motivation may be, the vast majority of firms manufacturing or distributing FDA-regulated products carry out their responsibility to remove or correct distributed products that are defective.

Thus, the recall policy and procedures of FDA are, in part, founded upon the cooperation of firms and their willingness to remove violative products from the marketplace. While the act does not explicitly mention recalls, the statutory sanctions available to FDA have a vital role in a firm's willingness to recall and support the development of recall as a major FDA regulatory tool. In those cases where a firm refuses to undertake a recall when requested to do so by FDA or where the agency has reason to believe that a recall would not be effective, FDA may initiate seizure and/or seek an injunction. Criminal prosecution may also be initiated. Therefore, protection of public health and welfare, which is the purpose of recalls, is not predicted solely on the principle of industry cooperation. Because of the persuasiveness of the alternative to recall, i.e., an FDA-initiated court action, the Commissioner believes that regulated firms will continue to cooperate with FDA in discharging their responsibility in recalling violative, marketed products.

The Commissioner is proposing these regulations to define more clearly FDA recall policy and procedures and to provide guidance to the regulated industry so that firms may more effectively discharge their responsibility to remove or correct violative products in commerce. The proposed regulations are authorized by section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (a)), which authorizes regulations for the efficient enforcement of the act, and sections 301, 351, and 361 of the Public Health Service Act (42 U.S.C. 241, 262, and 264) relating to cooperative programs for the protection of the public health, to biological products, and to interstate quarantine. The provisions of the proposed regulations that describe responsibilities of recalling firms consist of guidelines rather than enforceable requirements. In this respect, the proposed regulations do not exhaust the authority of FDA to prevent the introduction of violative products into commercial channels, facilitate recalls by manufacturers, and enable the agency to monitor recalls. See *National Confectioners Association* v. *Mathews*, Civil Action No. 75-1272 (D. D.C., April 15, 1975). If experience under the final regulations proves that mandatory requirements are necessary, the Commissioner will propose appropriate revisions.

HISTORY AND DEVELOPMENT OF FDA RECALL POLICY AND PROCEDURES

Product recall has evolved over the years as the most expeditious and effec-

tive method of removing violative products from the marketplace, particularly those that present a danger to health. The use of recalls preceded enactment of the Federal Food, Drug, and Cosmetic Act of 1938. One of the worst drug-related disasters in this country, the elixir of sulfanilamide incident in 1937, involved an extensive recall of a drug that had already caused the deaths of more than 100 persons. Another nationwide recall occurred in 1941 when FDA inspectors removed from the market sulfathiazole tablets that were contaminated with phenobarbital. During the 1940's, the annual reports of FDA first mentioned product recalls, and later these reports recorded the numbers of such actions. The 1947 annual report contained one of the first policy statements concerning recalls. Since that time, recalls have become accepted by FDA, industry, and the general public as an important means of protecting consumers in a wide variety of circumstances.

Public notification of recalls became routine in 1937 through the initiation of the weekly "FDA Enforcement Report," formally titled the "Food and Drug Administration Weekly Report of Seizures, Prosecutions, Injunctions, Field Corrections and Recalls." When this report was published, all product removal actions were considered to be recalls, regardless of the seriousness of the violation involved or whether a violation actually existed. Consequently, the number of recalls increased greatly, and it became increasingly difficult for the agency to monitor recalls effectively (Refs. 1, 2, and 3). In addition, the public's sense of urgency that should be associated with certain recalls was diminished because of the lack of a clear differentiation between recalls that involved health hazards or other significant violations, and those that did not.

In 1971, § 3.85 was promulgated to define the policy of FDA on recalls. Its most significant feature was to exclude from the definition of recall those market withdrawals involving no violations or only minor violations that would not be subject to legal action under existing compliance policy.

Following the promulgation of § 3.85, FDA was delegated the responsibility for administering the Radiation Control for Health and Safety Act (42 U.S.C. 263b through 263n), and the provisions of the Public Health Service Act that relate to biological products (42 U.S.C. 262 and 263). Because of these additional responsibilities, the continuing and expanded use of recalls, and the recognition that § 3.85 did not adequately deal with the range of possible violations or with the use of recall as a regulatory tool, the Commissioner established on April 26, 1973, an agency-wide internal task force to review the FDA recall policy and procedures.

In its report to the Commissioner (Ref. 4), the FDA task force recommended: that the recall procedures of FDA, which then dealt with foods, drugs, devices, and cosmetics, also include removals and field corrections of biological products and of electronic products subject to the Radiation Control for Health and Safety Act; that health hazard classifications be revised to provide greater flexibility in categorizing recalls relative to the seriousness of the hazard; that the agency policy of invariably issuing public warnings for every recall involving a serious hazard to health be modified; and that regulations on recalls be developed. These recommendations were approved by the Commissioner on August 7, 1973 (Ref. 5). Accordingly, the agency's internal procedures were revised, and the Commissioner revoked § 3.85 in the FEDERAL REGISTER of October 5, 1973 (38 FR 27592).

Shortly thereafter, another problem with recall procedures was identified. Over the years, FDA had frequently found it necessary to assume part or all of the burden of implementing recalls (Refs. 6 and 7). This sometimes imposed extremely heavy and unwarranted drains on the agency's resources. For example, approximately 18 percent of available man years of the entire FDA field investigational staff was required in fiscal year 1974 for coordinating and conducting checks to assure that recalls were properly effected. Resources from other consumer protection program areas were also used to accomplish these tasks. As a result, on February 1, 1974, the Commissioner established a second internal task force to develop solutions to this problem. On September 14, 1974, the Commissioner approved, with modification, the report of this task force (Ref. 8).

This second task force reiterated the need for regulations setting forth the obligations of manufacturers and distributors, not only with respect to initiating product recalls but also for carrying out their responsibility for effective conduct of recalls. Additionally, the task force suggested methods—telephone contacts, mailgrams, and telegrams—to supplement or replace physical visits as potentially more economical means of checking the effectiveness of a recall. The reliability of these methods is presently being field tested by FDA and a private contractor. Finally, this second task force recommended that uniform procedures be developed for evaluating health hazards of products being considered for recall. The task force reasoned that lack of such procedures directly affected resource utilization since the decision made on the degree of hazard or deception of the product being recalled under existing procedures automatically compelled a particular level of effectiveness checks by FDA field personnel.

The Commissioner reconvened this task force on April 29, 1975 to review health hazard evaluation procedures for recalls that had been developed in response to the task force's previous recommendation. After reviewing these procedures, the task force recommended that they be adopted on an agency-wide basis. In addition, it recommended that the agency use an individualized "recall strategy" under which a course of action for each recall would be developed that dealt with the depth of a recall, level of effectiveness checks, and if needed, scope of publicity. These three elements of "recall strategy" would depend on several factors and would not automatically be tied to the recall's health hazard classification scheme, as was agency practice at that time. The task force also recommended a new definition for each of the three recall classes. These recommendations, which were accepted by the Commissioner on September 24, 1975 (Ref. 9), were recently incorporated into the Food and Drug Administration Regulatory Procedures Manual, Chapter 5-00, and Compliance Policy Guide, No. 7153.07 (Ref. 10).

The regulations proposed in this notice reflect numerous refinements in FDA recall policy and procedures that have resulted from the task force reports mentioned above, as well as a description of the role and responsibilities the Commissioner believes manufacturers and distributors should have in recalls.

SCOPE AND POLICY

Section 2.703 of the proposed regulations defines a recall as a firm's removal or correction of distributed products that are in violation of the laws administered by FDA and that are, in the agency's opinion, subject to legal action. Correction includes repairs, modifications, adjustments, relabeling, inspection, or destruction of products without their actual physical removal or return to the manufacturer. Correspondingly, FDA does not regard the following actions by a firm as recalls: (1) Market withdrawals—products removed or corrected that are not violative or represent a minor violation for which FDA would not initiate legal action; and (2) stock recoveries—products removed or corrected that have not left the firm's direct control.

Actions respecting electronic products that are subject to the notification and remedy provisions of the Radiation Control for Health and Safety Act (42 U.S.C. 263g) are excluded from the definition of recall and from the procedures proposed in this notice. Manufacturers' corrections of these products continue, however, to be subject to regulations promulgated under that act, which contains strict mandatory removal or correction provisions; these regulations are found at 21 CFR 1003 and 1004.

Enactment of the Medical Device Amendments of 1976 has provided the agency with authority to require notification of risks and other administrative remedies (replacement, repair, refund) with respect to marketed medical devices. The Food and Drug Administration will promulgate separate regulations to implement this new authority and will exclude actions subject to these separate regulations from the procedures proposed in this notice.

The proposed regulations state the policy of FDA concerning recalls. In brief, a recall is an important regulatory method for expeditiously and effectively removing from the market illegal products that have been widely distributed and, as such, ordinarily is preferred to

seizure (or multiple seizure) or other legal sanctions against violative products. Recalls may be initiated by FDA or by manufacturers or distributors.

FDA-Initiated Recalls. There are two types of FDA-initiated recalls. First, when the agency determines that a marketed product violates the law and so informs the responsible firm, a later recall of the product by that firm is considered an "FDA-initiated recall," even though such action has not been specifically requested by the agency. Second, when use of the product presents a danger to health or significant consumer deception and immediate action is necessary, the Commissioner or his designee under § 5.20 (21 CFR 5.20) (formerly § 2.121(a) prior to recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)) will formally notify the firm of this determination and of the need to begin immediately a recall of the product. Because the latter type of FDA-initiated recall is an urgent matter and must be used judiciously, the decision to request a recall shall be made only by the Commissioner or his designee.

Firm-Initiated Recall. A firm may, for a variety of reasons, on its own initiative remove, correct or otherwise dispose of an illegal product that it has distributed in commerce. FDA has clear authority to require notification that a firm has initiated a recall of new drugs, new animal drugs, biologics, foods subject to emergency permit control, electronic products subject to the Radiation Control for Health and Safety Act, and articles subject to interstate quarantine regulations. However, the Commissioner also believes it serves the public interest for firms to notify FDA when a recall of any other FDA-regulated product is initiated. If the agency knows that a firm has initiated a recall, duplication of consumer protection efforts can be avoided. Thus, for example, FDA would not initiate a seizure action against a violative product if it knows that the shipment will be recalled by the responsible firm. Also, since the agency frequently receives inquiries about firm-initiated recalls, prior knowledge of these recalls would permit the agency to respond accurately concerning the firm's decision to act, the basis for such action, and the appropriateness of the firm's action.

The proposed regulations, therefore, encourage firms initiating a recall to notify FDA immediately. As part of such notification, certain information and facts regarding the recall are also requested. This will assist FDA in keeping abreast of industry activities and, where appropriate, allow an opportunity for the agency to comment on the adequacy of the recalling firm's efforts. For the same reasons, firms are also encouraged to inform FDA of market withdrawals and stock recoveries.

The proposed regulations also provide that the Commissioner will continue the policy of making available to the public information on all recalls by routinely issuing the weekly "FDA Enforcement Report." This report, which has wide distribution and is available upon request, is a weekly listing of product recalls and other regulatory actions of FDA. Its purpose is to meet the public's need and right to know about such actions. The report is not, however, intended to serve, nor is it used by the agency, as a form of public warning or as a means of seeking publicity in the news media. Public warnings relative to publicizing individual recalls are addressed under Recall Strategy elsewhere in this notice. The Commissioner also may seek to use the public media to avert confusion about a particular recall situation, to clarify a recall, or to provide information about a recall in any circumstance when, in his judgment, it is in the public interest. More detailed guidance on the agency's policy on the use of publicity will be addressed in specific regulations that the Commissioner will propose in the future.

There rarely may be instances in which the appearance of a particular recall in the weekly "FDA Enforcement Report" is purposely delayed by FDA. For example, if publicity about a defective implanted heart valve could cause unnecessary and harmful anxiety in patients and their families, appearance of such a recall would be delayed only if the recalling firm can identify all users, if prompt communication can adequately remove the risk to the public, and if the patients can be contacted directly by a health professional. The intent of such a delay is to assure that health professionals know about the defective product and have an opportunity to dicuss the recall and its significance to individual patients before the news media report it. The Commissioner wants to make clear, however, that all such recalls, without exception, will appear, without undue delay, in the weekly "FDA Enforcement Report." Moreover, enactment of the Medical Device Amendments of 1976 requires the agency to follow a somewhat different policy in connection with certain remedial actions involving medical devices.

RECALL PROCEDURES

A recall involves several separate but related steps that are taken by recalling firms and by FDA. These include: evaluation of the health hazard associated with the product being recalled or being considered for recall; developing and following a recall strategy (described below in this preamble); recall communications to a firm's customers; periodic reports on the progress of the recall; and finally, termination of the recall and proper disposition or correction of the violative product. The combined purpose of these steps is to assure that a recall is conducted in a manner that achieves the orderly removal or correction of a violative product to the extent necessary to protect public health.

Health Hazard Evaluation and Classification. The Commissioner believes that any violation of the laws administered by FDA is a serious matter. Obviously, however, some violations are more serious than others, and the relative seriousness of the violation has a bearing on the course of regulatory action the agency will pursue and what actions it expects of the responsible manufacturer or distributor, i.e., initiation of a recall. Thus, an attempt is made to determine not only whether the product is violative, but the gravity of the violation and its consequences to the public. For this reason, the agency carefully evaluates the seriousness of the health consequences or the economic deception that results from individuals using a product that is being recalled or being considered for recall. Consider, for example, a batch of drugs that is found to exceed the labeled amount of active ingredient by 50 percent: although this condition constitutes a violation that warrants regulatory action, such superpotency for one type of drug may not harm the user, while the same overage of another drug could cause serious harm. Thus, evaluation of the health-hazard of a violative product is vital to the agency's regulatory decision-making process.

The result of a health hazard evaluation generally dictates whether the agency will request a firm to recall its product. If a recall is requested, the results of the evaluation will, in part, also determine the strategy of conducting the recall. As a result of a task force recommendation previously discussed, the Commissioner has directed each FDA bureau to establish a Health Hazard Evaluation Committee for determining the health hazard of products that are being recalled by firms or considered for an FDA-initiated recall. The proposed regulations specify the various factors that each bureau's committee should consider in determining the health hazard.

The Commissioner does not consider a decision by a bureau Health Hazard Evaluation Committee to be necessary in those situations where the nature of the violation is such that no health hazard can reasonably be anticipated, where the committee previously evaluated a similar health hazard, or where there is obviously an extreme hazard in which immediate action by the agency is critical.

On the basis of the health hazard evaluation, a numerical classification is assigned to the recall, e.g., Class I, Class II, or Class III. The sole purpose of this classification system is to convey in lay terms the relative seriousness of the hazard associated with a specific recall. The class assigned to a recall does not dictate a specific course of action the agency and the recalling firm are to follow. The classification assigned to a particular recall will also appear in the weekly "FDA Enforcement Report."

Recall Strategy. Each recall, whether FDA-initiated or firm-initiated, requires devising a specific course of action to implement the recall. This course of action, termed "recall strategy," involves decisions concerning the depth to which the recall is to be conducted, whether public warnings are to be issued by the agency, and the extent to which the effectiveness of the recall is to be checked. In developing a strategy for a particular recall, the agency considers the following factors: the health hazard evaluation,

amount of the product distributed, distribution pattern of the product, ease in identifying the product, need for continued availability of essential products, and any other pertinent factors that may affect the situation. It is the responsibility of the appropriate FDA bureau to develop the recall strategy for FDA-initiated recalls. In the case of firm-initiated recalls, the appropriate bureau will review the adequacy of the recall strategy proposed by the recalling firm and, where necessary, recommend changes.

The elements of a recall strategy include:

1. Depth of recall. This element refers to the level of product distribution to which the recall is to extend. There are three basic options: (1) Consumer or user level (which may vary with product); (2) retail level; or (3) wholesale level. In cases where the hazard to health is so great that exposure to the product should be prevented to the fullest extent possible, the depth of recall would ordinarily be to the consumer or user level, e.g., physicians, veterinarians, hospitals, or restaurants. This depth of recall also requires recalling the product from intermediate levels of distribution, e.g., retail and wholesale levels. For violative products that pose a lesser hazard or where otherwise appropriate, the depth of recall may extend only to the retail or wholesale level but not to the consumer or user level. In other situations, there may be a recall only to the wholesale level, i.e., to the level (or levels) between the manufacturer or primary distributor and the retailer.

2. Public warnings. This element of the recall strategy refers to FDA-issued warnings to the public about a product in consumer channels that is being recalled. The purpose of a public warning is to alert consumers or users that a product presents a serious hazard to health. The Commissioner or his designee will authorize the issuance of public warnings for a particular recall when the facts indicate that it is necessary to protect consumers. An example of such a situation would be a recall of a distributed food product that is contaminated with *Clostridium botulinum* and that, if eaten, could cause serious injury or death. Widespread publicity would not normally be sought for the recall of a product distributed to a limited number of users when the recalling firm can identify all users, and prompt communications or personal visits can adequately remove the risk to the public.

The Commissioner stresses that under no circumstance will the agency withhold public disclosure of product recalls. As previously stated, the proposed regulations provide for all recalls to be routinely listed in the weekly "FDA Enforcement Report."

To further maintain the appropriate sense of urgency that must be associated with certain recalls, FDA will ordinarily retain responsibility to issue public warnings. The Commissioner would like to be apprised of any information issued by a recalling firm for the purpose of seeking publicity, preferably in advance. The issuance of information to the news media by a recalling firm will not in any way preclude FDA seeking further publicity, if the circumstances warrant it.

3. Effectiveness checks. The third element of recall strategy involves verification that consignees (recipients of a product being recalled) have been notified of the recall and have taken appropriate action. The Commissioner considers such effectiveness checks to be a vital part of the overall responsibility of recalling firms. For FDA to routinely carry out industry's task of assuring recall effectiveness would represent misuse of public funds. However, in keeping with the agency's responsibility for consumer protection and assuring that the regulated industry fulfills its responsibilities, FDA will monitor the efforts of a firm to effect a recall, and where necessary, will initiate its own effectiveness checks.

Historically, effectiveness checks have been conducted by FDA, cooperating State personnel, and by manufacturer representatives through personal visits to consignees. This method produces reliable information on the effectiveness of a recall but is highly costly. Recently of a recall but is highly costly. Recently, methods have been developed for verifying the effectiveness of a recall that are potentially more economical; these methods are now being field tested by the agency and by a private firm under an FDA contract. The purpose of the field test is to determine if telephone calls, letters, mailgrams, telegrams, or combinations of these methods can produce reliable information about whether consignees have received a recall notification and whether the product being recalled has in fact been removed or corrected. The reliability and cost of these methods will be compared to the reliability and cost of physical visits. Pending the completion of this field test and evaluation of the results, FDA and recalling firms may use methods other than physical visits on a case-by-case basis, but the method used should be supported by a number of physical visits.

The extent to which effectiveness checks are to be conducted will depend on the circumstances surrounding the recall. At present, the agency's approach calls for a certain percentage of known consignees to be contacted. Under this approach, the level of effectiveness checks may range anywhere from contact of 100 percent of known consignees to no contact. The agency has recently developed a statistical sampling schedule for various levels of effectiveness checks. If this procedure is determined to be workable and reasonable, it will be made publicly available and formally incorporated into the recall procedures.

Recall Communications. A recalling firm has the responsibility of promptly notifying each of its consignees of the recall. Any such recall communication must be designed to attract the attention of the recipient and convey the proper sense of urgency associated with the recall. In the past, FDA has found that such notifications have, on occasion, been constructed in a manner that diminishes the urgency of the message they were intended to convey. Inappropriate promotional material, qualifying statements, and irrelevant information have been included in recall communications and have obscured the main point of the message. To be effective, a recall notice must be clear, concise, and to the point as to the nature of the problem, and conspicuously indentified as a recall notice. It must be sent by the fastest means available. Additionally, a recall communication must include a method, e.g., a postage-paid, self-addressed postcard, and instructions that enable recipients to report quickly to the recalling firm whether they have any of the product being recalled. Similar followup communications should be sent to firms which do not respond to the initial recall communication.

FDA will promptly notify other Federal and State agencies having a direct interest in recalls and notify foreign governments when it is determined that products being recalled have also been exported.

Recall Status Reports. In order that FDA may more effectively carry out its consumer protection responsibilities in connection with product recalls, recalling firms should provide the agency with periodic reports on the status of on going recalls. Such reports, the details of which are listed in these proposed regulations, recognize both the responsibility of the firm to effect the recall and the responsibility of FDA to assure the public that the recall is progressing satisfactorily. Review of these reports will also assist the agency in assessing whether independent regulatory action is warranted, e.g., seizure of the product if the recall is not effective. Additionally, as described below, the status reports will be used by FDA to determine if the recall can be terminated.

Termination of Recall. A recall will be considered complete when FDA determines that all reasonable efforts have been made to effect the recall and that it is reasonable to assume that the product has been removed or corrected to the extent possible. This determination may be initiated by information contained in the recall status reports, FDA inspections, or a written request from the recalling firm. The Commissioner considers the action of the recalling firm to be complete only after the recalled product has been properly disposed of, e.g., through approved reconditioning, relabeling, repair, or destruction.

Industry Guidance. Initiation of a recall can be disruptive of a firm's operation and business. It is not the purpose of this proposal to add to this burden by placing unreasonable additional demands on conscientious firms confronted with the need to recall products. Rather, the Commissioner believes that the recall procedures proposed in this notice provide guidance for efficiently effecting a recall and, if followed, should serve to minimize adverse impact on manufacturers or distributors who initiate recalls.

To minimize the disruptive effect of recalls, the proposed regulations urge manufacturers and distributors to de-

velop detailed contingency plans for recalls. A prudent firm's recall plan should include a listing of key personnel responsible for directing the recall, establish appropriate communication techniques, and cover any other facet of the recall process that the firm can establish in advance of an actual recall. Several trade associations have developed "recall plans" to assist member firms and others in carrying out a recall. Additionally, the proposal expects firms to maintain adequate records and use product coding, since these can greatly facilitate locating and identifying those shipments of the firm's product that are subject to recall. Manufacturers and distributors of certain products subject to FDA jurisdiction are currently required to code their products and keep records. Such requirements have been judicially upheld as appropriate to assure that FDA regulated products do not endanger consumers. Even if not required to do so, the prudent firm should have adequate codes and maintain sufficient records to avoid disruption caused by the need to recall large numbers of products to recover or correct a small number that are defective, but which cannot be readily identified.

SUMMARY

Because the Commissioner considers recalls to be primarily the responsibility of manufacturers and distributors of requested products, this notice describes ways in which they should carry out this responsibility, which can be summarized in the following steps:

1. Develop a contingency plan for a recall.

2. Develop the capability of tracing product distribution and identifying the product being recalled.

3. Promptly notify FDA when products are being removed or corrected (including recalls, market withdrawals, and stock recoveries) and provide the agency with pertinent information on these actions.

4. Initiate a recall when it is requested by FDA.

5. Develop and follow a recall strategy for handling any recall situation.

6. Assume the responsibility and expense of conducting all aspects of a recall, including effectiveness checks.

7. Notify all consignees of initiated recalls.

8. Evaluate the circumstances causing the violation and take steps to prevent recurrence of violations and future recalls.

9. Provide periodic reports to FDA on the progress of the recall.

10. When a recall is completed, certify to FDA that the recall has been effective and that final disposition of the recalled product has been made.

The Commissioner believes that adoption of each of the above steps will assist manufacturers and distributors to discharge their responsibilities to the public. More importantly, compliance with the proposed regulations will enhance the efforts of both FDA and industry to conduct effective product recalls, thus improving protection of public health and well-being.

REFERENCES

A copy of each reference document is on file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, and may be seen during working hours, Monday through Friday.

1. Hearings on recall procedures of the Food and Drug Administration before a subcommittee of the House Committee on Government Operations, 92d Congress, 1st Sess., March 29, 1971.

2. Hearings on recall procedures of the Food and Drug Administration before the House Committee on Government Operations, 92d Congress, 1st Sess., October 21, 1971.

3. Associate Commissioner for Compliance, Food and Drug Administration, "Recalls—Definition and Exposition," Food, Drug, Cosmetic Law Journal, 662, 1972. Other articles on recall policy appear in the same issue.

4. Chairman, Recall Task Force, "Recall Task Force Report—Action Memorandum," August 2, 1973.

5. Commissioner of Food and Drugs, statement of FDA recall policy, September 21, 1973.

6. Commissioner of Food and Drugs, remarks presented before the National Conference on Product Recall, January 17, 1974.

7. Commissioner of Food and Drugs, "Food Safety: Industry's Responsibility," presented before the National Canners Association annual meeting, January 29, 1974.

8. Chairman, Recall Task Force II, "Recall Effectiveness Checks—Action Memorandum," May 9, 1974.

9. Chairman, Recall Task Force II, "Recalls—Health Hazard Evaluation Guidelines and Strategy—Action," June 30, 1975.

10. FDA Regulatory Procedures Manual, Chapter 5–00 and Compliance Policy Guide, No. 7153.07.

11. Comment, "The Food and Drug Administration's Recall Power After United States v. C.E.B. Products, Inc.," 69 Northwestern University Law Review, 635, 1975.

12. H.R. 5170, 94th Congress, 1st Sess., introduced March 19, 1975, by Representative Koch, to amend the Federal Food, Drug, and Cosmetic Act to provide for the recall or detention of food, drugs, devices, and cosmetics that are adulterated or misbranded or otherwise fail to comply with the act and to otherwise improve the administration and enforcement of the act.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. The Commissioner has also carefully considered the inflation impact of the proposed regulation as required by Executive Order 11821, OMB Circular A–107, and Guidelines issued by the Department of Health, Education, and Welfare, and no major inflation impact has been found. Copies of the FDA environmental and inflation impact assessments are on file with the Hearing Clerk, Food and Drug Administration.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 1 et seq., 52 Stat. 1040–1059 as amended (21 U.S.C. 301 et seq.)), the Public Health Service Act (secs. 301, 351, and 361, 58 Stat. 691–703 as amended (42 U.S.C. 241, 262, and 264)), and under authority delegated to him (21 CFR 5.1) recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), the Commissioner proposes that Part 2, Subpart N (proposed and published in the FEDERAL REGISTER of April 7, 1976 (41 FR 14769)), be amended by adding definitions to § 2.703 (as proposed) and by adding new §§ 2.715 through 2.724 as follows:

Section 2.703 is amended by adding new paragraphs (f) through (n) to read as follows:

§ 2.703 Definitions.

* * * * *

(f) "Product" means an article subject to the jurisdiction of the Food and Drug Administration, i.e., a food, drug, device, cosmetic, biologic, or any item subject to a quarantine regulation under Part 1240 of this chapter. "Product" does not include an electronic product that emits radiation and is subject to Parts 1003 and 1004 of this chapter.

(g) "Recall" means a firm's removal or correction of distributed products that in the judgment of the Food and Drug Administration are subject to legal action under the laws administered by the Food and Drug Administration. "Recall" does not include a market withdrawal or a stock recovery.

(h) "Correction" means repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a regulated product without its physical removal to the recalling firm's control.

(i) "Recalling firm" means the firm that initiated a recall or, in the case of an FDA-initiated recall, the firm that the agency designates as the recalling firm, which may be the manufacturer of the finished product or, where appropriate, the labeler, repacker, or distributor of the product.

(j) "Market withdrawal" means a firm's removal or correction of distributed products that, in the judgment of the Food and Drug Administration, do not present a violation of the law or involve a minor violation that would not be subject to legal action.

(k) "Stock recovery" means removal or correction of products that have not left the direct control of the firm and are located on premises owned by, or under the control of, the firm.

(l) "Recall strategy" means a planned course of action to be taken by the recalling firm in a specific recall that is developed by the firm and/or the Food and Drug Administration, and addresses the depth of recall, public warnings, and effectiveness checks for that recall.

(m) "Recall classification" means the numerical designation, i.e., I, II, or III, assigned to a recall by the Food and Drug Administration that indicates the relative degree of health hazard presented by the product being recalled.

(1) Class I is a situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death.

(2) Class II is a situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.

(3) Class III is a situation in which use of, or exposure to, a violative product is not likely to cause adverse health consequences.

(n) "Consignees" means those who have received shipments of a product being recalled and includes both direct accounts and subaccounts.

2. Sections 2.715 through 2.724 are added to read as follows:

§ 2.715 Recall policy.

Recall is an effective method of removing or correcting distributed products that are in violation of laws administered by the Food and Drug Administration. This section and §§ 2.716 through 2.724 set forth specific recall procedures for product manufacturers or distributors and for the Food and Drug Administration. These procedures recognize the responsibility of product manufacturers and distributors to protect the public from risks to health and well-being by recalling distributed products that are found to be adulterated, misbranded, or otherwise violative. The procedures also recognize the responsibility of the Food and Drug Administration to monitor recalls and assess the adequacy of a firm's efforts in recall.

(a) Recall may be undertaken voluntarily and at any time by a product's manufacturers and distributors, or at the initiation of the Food and Drug Administration. A request by the Food and Drug Administration that a firm recall a product is generally reserved for urgent situations.

(b) Recall is generally appropriate, and affords better protection for consumers than seizure, when many lots of product have been widely distributed. Multiple seizures or suit for an injunction is indicated when a firm refuses to undertake an FDA-initiated recall, or where the agency has reason to believe that a recall would not be effective, determines that a recall is ineffective, or discovers that a violation is continuing.

§ 2.716 FDA-initiated recall.

(a) The Commissioner of Food and Drugs or his designee under § 5.20 of this chapter may request a firm to initiate a recall when he determines:

(1) That a product that has been distributed presents a risk of serious illness or injury or significant consumer deception;

(2) That the firm has not initiated a recall of the product; and

(3) That an agency action is necessary to protect the public.

(b) The Commissioner or his designee will notify the firm of this determination and of the need to begin immediately an FDA-initiated recall of the product. Notification will ordinarily be by telegram to a responsible official of the firm. Notification may also be given by oral communication or by a visit from a representative of the local FDA district office, with written confirmation from the Commissioner or his designee afterward. The notification will specify the violation, the health hazard classification of the violative product, the recall strategy, and other appropriate instructions for conducting the recall. The firm may be asked to provide any or all of the information listed in § 2.717(a).

(c) Responsible officials of a firm may decide a recall a product when informed by an employee of the Food and Drug Administration that the agency has determined that the product in question violates the law. Such action shall also be considered an FDA-initiated recall.

§ 2.717 Firm-initiated recalls.

(a) A firm may, on its own volition and under any circumstances, remove a product from the market or correct it in the field. A firm that does so should immediately notify the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter. Such removal or correction will be considered a recall only if the Food and Drug Administration regards the product as involving a volation that is subject to legal action. In such cases, the firm will be asked to provide to the Food and Drug Administration the following information:

(1) Identity of the products involved.

(2) Description of the deficiency or possible deficiency in the product and the date and circumstances under which it was discovered.

(3) Evaluation of the risk associated with the deficiency or possible deficiency.

(4) Total number of such products produced and the time span of the production.

(5) Total amount of such products estimated to be in distribution channels.

(6) Distribution information, including identiy of all consignees.

(7) Copy of the firm's recall communication, if any has issued, or a proposed communication if none has issued.

(8) Proposed strategy for conducting the recall.

(9) Name and telephone number of the firm official who should be contacted concerning the recall.

(b) The Food and Drug Administration will review the information submitted, advise the firm of the assigned recall classification, recommend any appropriate changes in the firm's strategy for recall, and advise the firm that its recall will be placed in the weekly "FDA Enforcement Report."

(c) Firms engaged in market withdrawals or stock recoveries of their products should also notify the appropriate Food and Drug Administration district office and provide, where applicable, the information listed in paragraph (a) of this section.

§ 2.718 Health hazard evaluation and recall classification.

(a) In determining the health hazard presented by a product being recalled or being considered for recall, the Food and Drug Administration will take into account, but need not be limited to, the following factors:

(1) Whether any disease or injuries have already occurred from the use of the violative product(s).

(2) Whether any existing conditions could contribute to a clinical situation that could expose humans or animals to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

(3) Assessment of hazard to various segments of the population, e.g., children, surgical patients, pets, livestock, etc., who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

(4) Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

(5) Assessment of the likelihood of occurence of the hazard.

(6) Assessment of the consequences (immediate or long-range) of occurrence of the hazards.

(b) On the basis of this determination, the Food and Drug Administration will assign a recall classification, i.e., Class I, Class II, or Class III, that indicates the relative degree of health hazard of the product being recalled or considered for recall.

§ 2.719 Recall strategy.

(a) *General.* A recall strategy will be developed by the Food and Drug Administration and/or by the recalling firm to suit the individual circumstances of the particular recall, taking into account the health hazard evaluation and other pertinent factors such as need for continued availability of essential products, amount of the product in commerce, distribution, and ease in identifying the product. The Food and Drug Administration will review the adequacy of any proposed recall strategy developed by a recalling firm and recommend changes as appropriate. A recalling firm should conduct the recall in accordance with an approved recall strategy but need not delay initiation of a recall pending review of its recall strategy.

(b) *Elements of a recall strategy.* Recall strategy should include the following elements regarding the conduct of the recall:

(1) *Depth of recall.* The recall strategy should specify the level in the distribution chain to which the recall is to extend, as follows:

(i) Consumer or user level, which may vary with product, including any intermediate wholesale or retail level;

(ii) Retain level, including any intermediate wholesale level; or

(iii) Wholesale level.

(2) *Public warning.* The purpose of public warnings is to alert the public that a product being recalled presents a serious hazard to health. The recall strategy should specify whether the Food and Drug Administration will issue:

(i) General public warnings through the general news media, national or local, as appropriate;

(ii) Public warnings through specialized news media, e.g., professional or trade press, or to specific segments of the population such as physicians; or

(iii) No public warnings.

(3) *Effectiveness checks.* The recall strategy shall specify the level of recall effectiveness checks that the recalling firm will carry out, as follows:

(i) Level A—100 percent of the total number of known consignees and, if necessary, consumers to be contacted.

(ii) Level B—Any percentage of the total number of known consignees to be contacted that is greater than Level C, but less than Level A.

(iii) Level C—10 percent of the total number of known consignees to be contacted.

(iv) Level D—2 percent of the total number of known consignees to be contacted.

(v) Level E—No effectiveness checks.

§ 2.720 Recall communications.

(a) A recalling firm is responsible for promptly notifying each of its consignees of the recall. This can be accomplished by telegrams, mailgrams, or first class letters conspicuously marked, preferably in bold red type, on the letter and the envelope: "URGENT—DRUG (or FOOD, BIOLOGIC, etc.) RECALL." Telephone calls or other personal contacts should be confirmed by one of the above methods.

(b) Regardless of the method used, the communication should be brief and to the point. It should identify clearly the product, size, potency, type, lot number(s), code(s) or serial number(s), and provide any other information to enable accurate identification of the product being recalled and include a concise explanation of the reason for the recall and the nature of the violation and hazard involved, if any. The communication shall not contain qualifications, irrelevant statements, promotional material, or other statements that may detract from the message. A recalling firm should also provide instructions and a ready means for the recipients of the communication to report to the recalling firm whether they have any of the product, e.g., by sending a postage-paid, self-addressed postcard. Followup communications should be sent to consignees that fail to respond to the initial recall communications.

§ 2.721 Recall status reports.

Unless otherwise specified, the recalling firm should submit reports every two weeks containing the following information to the appropriate Food and Drug Administration district office:

(a) Number of consignees notified of the recall, and date and method of notification.

(b) Number of consignees responding to the recall communication and quantity of products on hand at the time it was received.

(c) Number and identity of consignees that did not respond.

(d) Number of products returned or corrected by each consignee contacted and the quantity of products accounted for.

(e) Number and results of effectiveness checks that were made.

(f) Reconciliation of the quantity of products accounted for and the amount estimated on the market.

(g) Time frames for completion of the recall.

§ 2.722 Termination of a recall.

(a) A recall will be terminated when the Food and Drug Administration determines that all reasonable efforts have been made to remove the product from the market or effect the field correction, in accordance with the recall strategy, and when it is reasonable to assume that the products subject to the recall have been removed and proper disposition or correction have been made of the recalled product. Written notification that a recall is terminated will be issued by the appropriate Food and Drug Administration district office to the recalling firm.

(b) A recalling firm may request the Food and Drug Administration to terminate a recall by submitting a written request to such Food and Drug Administration district office stating that the recall is effective, and accompanying the request with the most current recall status report, a description of the disposition of the recalled product, and a signature from a responsible official of the firm. In terminating a recall, the Food and Drug Administration may request that the firm submit a description of the measures that have been instituted to prevent a recurrence of the problem. A terminated recall may be reopened if new information shows such action to be necessary.

§ 2.723 Industry guidance.

Manufacturers and distributors of certain products are subject to specific requirements in other parts of this chapter concerning procedures for recall, product coding, and recordkeeping, e.g., Parts 128 and 210 of this chapter. The Commissioner advises that every manufacturer or distributor of other products should as a matter of good manufacturing practice:

(a) Prepare and maintain a current written plan for use in effecting recalls. The recall plan should include procedures for notifying the Food and Drug Administration of any undertaking of an FDA-initiated recall in accordance with § 2.716, of any firm-initiated recall in accordance with § 2.717, developing a proposed recall strategy in accordance with § 2.719, and maintaining records of recall status reports under § 2.721, or other records documenting the extent and effectiveness of recalls.

(b) Use sufficient coding of regulated products in order to enable positive lot identification and to facilitate effective recall of all violative lots.

(c) Maintain such product distribution records as are necessary to facilitate location of products that are being recalled. Such records should be maintained for a period of time that exceeds the shelf-life or expected use of the product and maintained in accordance with the requirements of other applicable regulations dealing with retention of records.

§ 2.724 Public notification of recall.

The Food and Drug Administration will make available to the public in the weekly "FDA Enforcement Report" a listing and recall classification of each firm-initiated recall and each FDA-initiated recall. The report will not include actions that the Food and Drug Administration determines to be market withdrawals or stock recoveries. The report, which also includes other Food and Drug Administration regulatory actions, e.g., seizures that were effected, and injunctions and prosecutions that were filed, is available upon request from the Office of Public Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Interested persons may, on or before August 30, 1976, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: June 18, 1976.

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

[FR Doc.76-18888 Filed 6-29-76;8:45 am]

Social Security Administration

[20 CFR Parts 404, 405, 410, and 416]

[Regs. No. 4, 5, 10, 16]

AGED AND DISABLED INSURANCE, SUPPLEMENTAL INCOME, AND BLACK LUNG BENEFITS

Change in the Time Period for Requesting Reconsideration and Hearing

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare.

Section 1 of Pub. L. 94-202 amended section 1631(c) of the Social Security Act by increasing the time period for requesting a hearing in the supplemental security income program from 30 to 60 days after notice of a determination is

received, effective January 2, 1976. Therefore, Subparts M and N of Social Security Administraton Regulations No. 16 are being amended to show that the time period for requesting a hearing in that program is now 60 days from the date a notice is received rather than 30 days from such date. This change is applicable with respect to a supplemental security income determination where notice was received on or after January 2, 1976 by the individual requesting a hearing.

In addition, other amendments to Subparts M and N of Regulations No. 16 would increase from 30 to 60 days the time period within which a claimant for or recipient of supplemental security income may request reconsideration of an initial and, where applicable, a revised determination.

The period of time heretofore allowed for requesting a reconsideration of a determination of a title XVI benefit was 30 days from the date of receipt of notice of the initial determination. This administrative policy has been in effect since the inception of the title XVI program, January 1, 1974. The 30-day time frame for requesting a reconsideration was established to reflect a common approach with the 30-day period within which a claimant may request a hearing as previously provided by statute, section 1631(c)(1) of the Social Security Act. Since the reconsideration process is not provided by statute but, by regulation, is a prerequisite to requesting a hearing, it is appropriate to have the same time period for an individual to request that level of administrative review. Pub. L. 94-202 extends the title XVI hearing time frame to 60 days from the date of receipt of notice of the determination. Therefore, the change in policy to 60 days for a title XVI reconsideration will conform to the hearing time frame as enacted. As this change increases the time an individual would have to request reconsideration and conforms the reconsideration time period to the time period prescribed by section 1 of Pub. L. 94-202 for hearing requests, the procedures reflected in the amendments to Subparts M and N of Regulations No. 16 have been implemented with respect to any determination where notice was received on or after January 2, 1976 by the individual requesting a reconsideration.

Pub. L. 94-202 also makes the Title II and Title XVI appellate process uniform in several respects. Section 4 amended section 205(b) of the Social Security Act by changing the time period for requesting a hearing to 60 days after notice of a decision is received, effective March 1, 1976. Section 205(b) of the Social Security Act is adopted by reference in sections 1862(d)(3), 1869 (b) and (c), 1876(f), by cross-reference in section 1879(d) of the Social Security Act; and by reference in section 413(b) of the Federal Coal Mine Health and Safety Act of 1969, as amended. Therefore, Regulations No. 4, Subpart J, Regulations No. 5, Subparts G, O, and T, and Regulations No. 10, Subpart F are being amended to show that the previous time period for requesting a hearing, 6 months from the date a notice of a determination is mailed, under the Title II, hospital insurance, and black lung benefit programs, has been changed to 60 days after the date a notice of decision is received. The date of receipt of such notice will be presumed to be 5 days after the date of such notice. The change in time period for requesting a hearing is specified by statute and applies with respect to any determination where notice has been received by an individual requesting a hearing on or after March 1, 1976.

Amendments to Regulations No. 4, Subpart J, Regulations No. 5, Subparts G, O, and T, and Regulations No. 10, Subpart F would also change the time period for requesting reconsideration of an initial determination regarding Title II benefits, hospital insurance benefits, black lung benefits, or hospital insurance participation by providers and other suppliers of services from within 6 months from the date of mailing notice of such determination to within 60 days after the date of receipt of such notice. The date of receipt of such notice will be presumed to be 5 days after the date of such notice. This change would make the time period for requesting reconsideration in those programs the same as that for requesting a hearing. If these provisions with respect to reconsideration are adopted they will be implemented after they are published in final in the FEDERAL REGISTER.

The reconsideration level of the social security appeals process is an administrative review function provided by regulations for claimants who are dissatisfied with an initial determination. The period of time currently allowed for requesting a reconsideration of an initial determination of Title II, Title XVIII, or black lung benefits, and Title XVIII participation by providers and other suppliers of services, is with 6 months from the date of notice of such determination. This period of time, 6 months, is consistent with that previously provided by the Social Security Act for requesting a hearing under these programs.

The Social Security Administration established an administrative practice of conforming the reconsideration time frame to the hearing time frame in 1940 when the reconsideration step was provided as an option to a hearing without forfeiting the claimant's right to a hearing if the claimant wished to pursue an unfavorable reconsideration. The time frames for the reconsideration and hearing were more closely linked in 1959 when the reconsideration step was made mandatory before a hearing would be authorized.

Since the law provided at least 6 months for a hearing to be requested, it was necessary to protect the rights of a claimant who was required to go through an intervening reconsideration step before a hearing could be authorized. Thus, if a claimant were limited to less than 6 months within which to request a reconsideration, and failing to file timely were thereby precluded from going on to the hearing level (because of the mandatory reconsideration step) he would, in effect, have been deprived of his right to a hearing under the law even though 6 months might not have elapsed since notification of the determination. Therefore, the time frame of 6 months as provided for Title II hearings became, in effect, an aggregate double 6 month period for the two levels; i.e., reconsideration and hearing. This policy was also applied by the Social Security Administration to Title XVIII and the black lung benefit program.

Historically, therefore, the reconsideration time frame duplicated the statutory hearing time frame to protect the claimants' statutory rights and, in addition, the common time frame has been preferential from the standpoint of service to the public. A common time frame for the reconsideration level and hearing level alleviates any added confusion that would result if the period of time allowed for each level were different. The implementation of this policy will conform the reconsideration time frame to the newly enacted time frame of 60 days for hearings requests in accordance with Pub. L. 94-202, thereby sustaining the preexistent pattern of common time frames for these two levels in the appeals process, and reflecting Congressional intent expressed during hearings held prior to the enactment of Pub. L. 94-202 that the time period for requesting this administratively mandated reconsideration step also be changed to 60 days.

Additionally, the adoption of a uniform time frame of 60 days for *all* reconsiderations, including the appeals process for supplemental security income (Title XVI) claims, will provide more efficient processing when an issue at question is common to both Title II and Title XVI. (Regulations to change the time period for requesting review of a determination by the Appeals Council are being drafted and will be promulgated in the near future.)

The reduction in the period of time allowed to request a reconsideration on Title II, Title XVIII, and black lung determinations will not deprive the claimant of his right to protest a decision. Although the length of time he will have to request a reconsideration will be shortened, the 60-day period is considered adequate time for a person to express his dissatisfaction with a determination. To protect claimants in cases where the time limit has expired, the Social Security Administration has procedures under which an initial determination may be reopened. In addition, Social Security Administration regulations provide for an extension of the time allowed to file for a reconsideration if good cause for not filing timely is established.

On November 18, 1975, regulations were published in the FEDERAL REGISTER (40 FR 53384) which implemented the U.S. Supreme Court decision in *Salfi* v. *Weinberger*, 422 U.S. 749 (1975). Those regulations provided an expedited appeals process for any party who has received at least a reconsideration determination, has no dispute with the Secretary's findings of fact and application

and interpretation of the controlling laws beyond a contention that a section of the applicable statute is unconstitutional, and pursues as the sole remaining issue a challenge to the constitutionality of a section of the pertinent statute which precludes a favorable action on the party's claim. The expedited appeals process can be invoked only after a reconsideration determination has been made. Therefore, a period of 6 months after the date of mailing the notice (the same time limit for requesting a hearing) was allowed within which to invoke the expedited appeals process with respect to Title II, Title XVIII, and black lung determinations. As mentioned above, the time limit for filing a request for hearing has been changed to 60 days after the date of receipt of the reconsideration notice, with the date of receipt being presumed to be 5 days after the date of the notice. Accordingly, we also propose changing the time period for requesting the expedited appeals process from 6 months to 60 days after the date of receipt of the reconsideration notice. Again, the date of receipt of such notice will be presumed to be 5 days after the date of the notice. This conforming change would be in keeping with the Social Security Administration's efforts to have uniformity throughout its appeals process for the various programs it administers. This change would also prevent the possibility that parties to a determination who mistakenly believe they qualify for the expedited appeals process, will miss the 60 day time period for requesting a hearing and thereby lose their appeal rights. The time period for requesting the expedited appeals process in the supplemental security income program would be increased to 60 days. If these provisions with respect to the expedited appeals process are adopted, they will be implemented after they are published in final in the FEDERAL REGISTER.

Prior to final adoption of these proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining to these amendments, which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203 on or before August 16, 1976.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201 until August 16, 1976.

The proposed amendments are to be issued under the authority of sections 205 (a) and (b), 1102, 1631(c), 1862(d)(3), 1869, 1871, and 1876(f), and 1879(d) of the Social Security Act, and sec. 413(b) of the Federal Coal Mine Health and Safety Act; 53 Stat. 1368, 49 Stat. 647, 86 Stat. 1475, 79 Stat. 325, 79 Stat. 330, 79 Stat. 331, 86 Stat. 1396, 83 Stat. 794; (42 U.S.C. 405(a) and (b), 1302, 1383(c), 1395y(d)(3), 1395ff, 1395hh, 1395mm; 1395(d)); (30 U.S.C. 932).

(Catalog of Federal Domestic Assistance Program Nos. 13.800, Health Insurance for the Aged-Hospital Insurance; 13.802, Social Security-Disability Insurance; 13.803, Social Security-Retirement Insurance; 13.804, Special Benefits for Persons Aged 72 and Over; 13.805, Social Security-Survivors Insurance; 13.806, Special Benefits for Disabled Coal Miners; Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: June 10, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: June 21, 1976.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Parts 404, 405, 410, and 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. Section 404.911 is revised to read as follows:

§ 404.911 Time and place of filing request.

The request for reconsideration shall be made in writing and filed at an office of the Social Security Administration or, in the case of an individual in the Philippines, at the Veterans' Administration Regionary Office in the Philippines, or, in the case of an individual having 10 or more years of service in the railroad industry (see Subpart 0 or of an individual entitled to an annuity on the basis of an award under the Railroad Retirement Act prior to October 30, 1951, who requests in writing reconsideration with respect to his application to establish a period of disability under section 216(i) of the Act, at an office of the Railroad Retirement Board, within 60 days after the date of receipt of notice of the initial determination, unless such time is extended as provided in § 404.612 or § 404.953. For purposes of this section, the date of receipt of notice of the initial determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

2. Section 404.916b(b)(1) and (3) is revised to read as follows:

§ 404.916b Expedited appeals process; place and time of filing request.

* * * * *

(b) *Time of filing request.* * * *

(1) No later than 60 days after the date of receipt of notice of the reconsidered determination, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954. For purposes of this paragraph, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

(3) Within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954. For purposes of this paragraph, the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

3. Section 404.918 is revised to read as follows:

§ 404.918 Time and place of filing request.

The request for hearing shall be made in writing and filed at an office of the Social Security Administration or, in the case of an individual in the Philippines, at the Veterans Administration Regional Office in the Philippines, or with an Administrative Law Judge, or the Appeals Council, or, in the case of an individual having 10 or more years of service in the railroad industry (see Subpart O) or of an individual entitled to an annuity on the basis of an award under the Railroad Retirement Act prior to October 30, 1951, who requests in writing a hearing with respect to his application to establish a period of disability under section 216(i) of the Act, at an office of the Railroad Retirement Board. The request for hearing must be filed within 60 days after the date of receipt of notice of the reconsidered determination by such individual, except where the time is extended as provided in § 404.612 or § 404.954. For purposes of this section, the date of receipt of notice of the reconsidered determination notice shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

4. Section 404.963 is revised to read as follows:

§ 404.963 Time and place of requesting hearing on revised determination.

The request for hearing shall be made in writing and filed at an office of the Social Security Administration, or with an Administrative Law Judge, or the Appeals Council, within 60 days after the date of receipt of notice of the revised determination. Upon the filing of such request, a hearing with respect to such revision shall be held (see §§ 404.919–404.938) and a decision made in accordance with the provisions of § 404.939. For purposes of this section, the date of receipt of notice of the revised determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

5. Section 405.711 is revised to read as follows:

§ 405.711 Time and place of filing request for reconsideration.

The request for reconsideration shall be made in writing and filed at an office of the Social Security Administration or,

in the case of a qualified railroad retirement beneficiary (see § 404.368 of this chapter) filed at an office of the Railroad Retirement Board, within 60 days after the date of receipt of notice of initial determination, unless such time is extended as provided in § 405.712. A request for reconsideration which is filed with the intermediary which received the request for payment submitted on behalf of the individual is considered to have been filed with the Social Security Administration as of the date it is filed with the intermediary. For purposes of this section, the date of receipt of notice of the initial determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

6. Section 405.717 is revised to read as follows:

§ 405.717 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon all parties unless a request for a hearing is filed with the Social Security Administration within 60 days after the date of receipt of notice of the reconsidered determination by such parties, or unless the reconsidered determination is revised in accordance with the provisions of § 405.750, or unless the expedited appeals process is used in accordance with § 405.718a. For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

7. Section 405.718a(b)(1) and (3) are revised to read as follows:

§ 405.718a Expedited appeals process; place and time of filing request.

* * * * *

(b) *Time of filing request.* * * *

(1) No later than 60 days after the date of receipt of notice of the reconsidered determination, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954 of this chapter. For purposes of this paragraph, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

(3) Within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954 of this chapter. For purposes of this paragraph, the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

8. Section 405.722 is revised to read as follows:

§ 405.722 Time and place of filing request for a hearing.

The request for a hearing shall be made in writing and filed at an office of th Social Security Administration or with an Administrative Law Judge, or, in the case of a qualified railroad retirement beneficiary, at an office of the Railroad Retirement Board. Such request must be filed within 60 days after the date of receipt of notice of the reconsidered determination by such individual, except where the time is extended as provided in § 404.954(a) of Part 404 of this chapter. For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

9. Section 405.1511(b) is revised to read as follows:

§ 405.1511 Time and place of filing request for reconsideration.

* * * * *

(b) The request for reconsideration must be filed within 60 days after the date of receipt of notice of the initial determination unless the time for filing is extended as provided in § 405.1518. The request is to be filed with the Secretary or with an employee of the Department of Health, Education, and Welfare authorized to accept such requests at a place other than such office. A request for reconsideration which has been timely filed with the State agency that performed the survey and certification function will be considered to have been filed with the Secretary. For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

10. Section 405.1531 paragraph (a) is revised to read as follows:

§ 405.1531 Filing a request for a hearing; time and manner of filing.

(a) The request for a hearing shall be made in writing, signed by the person, or a proper official of the institution, agency, clinic, laboratory, portable X-ray supplier, or end-stage renal disease treatment facility concerned and filed at an office of the Department of Health, Education, and Welfare, or with an Administrative Law Judge or the Appeals Council of the Bureau of Hearings and Appeals. The request must be filed within 60 days after the date notice of an initial determination provided for in § 405.1502 (b)(2), (c), (d)(2), or (e), or a reconsidered or revised determination, is received by the institution, agency, clinic, laboratory, portable X-ray supplier, end-stage renal disease treatment facility, or person (see §§ 405.1503, 405.1516, and 405.1520), except where the time is extended for "good cause" (see § 405.1569). For purposes of this section, the date of receipt of notice of the initial, reconsidered or revised determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

* * * * *

11. In § 405.2059, paragraphs (c) and (j) are revised to read as follows:

§ 405.2059 Appeals: Reconsideration.

* * * * *

(c) *Time of filing request for reconsideration.* The request for reconsideration shall be filed within 60 days after the date of receipt of notice of the initial determination, unless such time is extended as specified in paragraph (d) of this section. For purposes of this section, the date of receipt of notice of the initial determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

* * * * *

(j) *Effect of reconsideration determination.* The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a request for hearing is filed within 60 days after the date of receipt of notice of the reconsidered determination by such parties or unless the reconsideration determination is revised upon reopening in accordance with the provisions of § 405.2063, or unless the expedited appeals process is used in accordance with § 405.718. For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

12. Section 405.2060 paragraph (d) is revised to read as follows:

§ 405.2060 Appeals: Hearing.

* * * * *

(d) *Time limit for filing request for hearing.* Any request for hearing must be filed within 60 days after the date of receipt of notice of the reconsidered determination to the enrollee, except when the time is extended by an Administrative Law Judge as provided in § 404.954(a) of this chapter. For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

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PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS

13. Section 410.624 is revised to read as follows:

§ 410.624 Time and place of filing request.

The request for reconsideration shall be made in writing and filed at an office of the Social Security Administration within 60 days after the date of receipt of notice of the initial determination, unless such time is extended as specified in § 410.668. For purposes of this section, the date of receipt of notice of the initial

determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

14. Section 410.629b paragraph (b) (1) and (3) are revised to read as follows:

§ 410.629b(b) Expedited appeals process; place and time of filing request.

* * * * *

(b) *Time of filing request.* * * *

(1) No later than 60 days after the date of receipt of notice of the reconsidered determination, unless the time is extended in accordance with the standards set out in § 410.669 of this chapter. For purposes of this paragraph, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

(3) Within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 410.669 of this chapter. For purposes of this paragraph (b)(3), the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

15. Section 410.631 is revised to read as follows:

§ 410.631 Time and place of filing request.

The request for hearing shall be made in writing and filed at an office of the Social Security Administration or with an Administrative Law Judge, or the Appeals Council. Except where the time is extended as provided in § 410.669, the request for hearing must be filed:

(a) Within 60 days after the date of receipt of notice of the reconsidered determination by such individual. For purposes of this section, the date of receipt of notice of the reconsidered determinations shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(b) Where an effective date (not more than 30 days later than the date of mailing) is expressly indicated in such notice, within 60 days after such effective date.

16. Section 410.678 is revised to read as follows:

§ 410.678 Time and place of requesting hearing on revised determination.

The request for hearing shall be made in writing and filed at an office of the Social Security Administration, or with an Administratvie Law Judge, or the Appeals Council, within 60 days after the date of receipt of notice of the revised determination. Upon the filing of such a request, a hearing with respect to such revision shall be held (see §§ 410.631–410.653) and a decision made in accordance with the provisions of § 410.654. For purposes of this section, the date of receipt of notice of the revised determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

§ 416.1336 [Amended]

§ 416.1421 [Amended]

17. Sections 416.1336 and 416.1421(a) are amended by changing the term "30 days" to "60 days" wherever it appears in those sections.

18. Section 416.1410 is revised to read as follows:

§ 416.1410 Time and place of filing request.

The request for reconsideration shall be made in writing and filed at an office of the Social Security Administration within 60 days from the date of receipt of notice of the initial determination, unless such time is extended as specified in § 404.953 of this title. (See § 416.1336(c) for the time period within which the request must be made for a right to continuation or reinstatement of payment pending the reconsidered decision.) For purposes of this secion, the date of receipt of notice of the initial determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

19. Section 416.1424a paragraph (b) (1) (b) (3) are revised to read as follows:

§ 416.1424a Expedited appeals process; place and time of filing request.

* * * * *

(b) *Time of filing request.* * * *

(1) No later than 60 days after the date of receipt of notice of the reconsidered determination, unless the time is extended in accordance with the standards set out in § 404.612 of this chapter or § 416.1474. For purposes of this paragraph, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

(3) Within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 404.612 of this chapter or § 416.1474. For purposes of this paragraph, the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

* * * * *

20. Section 416. 1426 is revised to read as follows:

§ 416.1426 Time and place of filing request for hearing.

The request for hearing shall be in writing and filed with an office of the Social Security Administration, including a hearing office, or with the Appeals Council. The request for hearing must be filed within 60 days after the date of receipt of notice of the reconsidered determination or revised determination as provided in § 416.1483(c), or within 60 days after the date of receipt of notice of the initial determination that blindness or disability has ceased due to medical improvement. For purposes of this section, the date of receipt of notice of the reconsidered, or revised determination, or of the initial determination regarding the cessation of blindness or disability due to medical improvement, shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

21. Section 416.1487 is revised to read as follows:

§ 416.1487 Time and place of requesting reconsideration or hearing on revised determination.

The request for reconsideration or hearing shall be made in writing and filed at an office of the Social Security Administration, or with a presiding officer, or the Appeals Council, within 60 days after the date of receipt of notice of the revised determination. Upon the filing of such request, the reconsideration or hearing with respect to such revision shall be processed and a determination or decision made in accordance with the provisions of § 416.1416 or § 416.1457, respectively. For purposes of this section, the date of receipt of notice of the revised determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

[FR Doc.76-18930 Filed 6-29-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR 720B, 712C & 713A]

[Docket No. 76-7]

REAL PROPERTY ACQUISITION AND MANAGEMENT

Advance Notice of Proposed Rulemaking

The Department of Transportation (DOT) revised 49 CFR Part 25, its regulations which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, on September 4, 1975 (40 FR 41040). The revisions in Subpart I of the DOT regulations necessitate changes in Federal Highway Administration (FHWA) regulations which implement Title III of the Uniform Act. The purpose of this Notice is to advise all affected parties:

(1) Of FHWA's intentions regarding implementation of Part 25, Subpart I, of the revised DOT regulations, and

(2) That FHWA is considering the revision of certain other real property acquisition regulations in order to conform to the principles of the DOT regulations.

In order for FHWA to properly evaluate the potential impacts, both positive and negative, of the proposed revisions of FHWA policy, interested parties are invited to submit their views. Comments

are invited on the feasibility of having different requirements depending on the complexity and size of the acquisition and its effect on the public, and suggestions on how this might be best accomplished.

Data and comments on this advance notice of proposed rulemaking should be submitted in triplicate to the Federal Highway Administration, Department of Transportation, Room 4230, Docket No. 76–7, 400 7th Street, SW., Washington, D.C. 20590. All written communications received within 45 days after the date of issuance will be considered before final action is taken on this advance notice of proposed rulemaking. Copies of comments received will be available for examination during normal business hours, 7:45 a.m. to 4:15 p.m., at the foregoing address.

This advance notice of proposed rulemaking is issued under the authority of 23 U.S.C. 315 and 49 CFR 1.48.

49 CFR 25.5 concerning applicability of the DOT regulations states:

> This part applies to projects which are part of a Federal or Federally assisted program administered by the Department of Transportation and which after January 1, 1971, cause the displacement of persons or the acquisition of real property, *including acquisition by a State agency without Federal financial assistance.* (emphasis added)

Under 49 CFR 25.9, FHWA regulations must implement the requirements of the Uniform Act and the DOT regulations in Part 25. Therefore, pursuant to 49 CFR 25.5, FHWA's implementing regulations must apply if Federal funds participate in any part of project costs.

Thus, implementation of 49 CFR 25.260, Criteria for Appraisals, requires basic changes to present FHWA appraisal regulations (23 CFR 720.201–720.204) because present appraisal standards, review requirements, and appraiser qualification criteria apply only if Federal funds participate in right-of-way costs.

Because FHWA is required to revise the applicability provisions of its appraisal regulations, it is also considering the revision of regulations relative to negotiations (23 CFR 712.301–712.304) and property management (23 CFR 713.101–713.103) so that these would apply in a like manner. These sections contain requirements that are in addition to those prescribed by the Uniform Act and the DOT regulations.

The policies contained in the present regulations will be carefully evaluated in light of the proposed change in applicability to assure that the regulations would be reasonable and practicable. Particular attention will be given to the potential impact of the regulations on the smaller cities and counties which occasionally acquire rights-of-way for federally assisted highway projects.

The reasons for this proposal and the advantages of a uniform application of FHWA right-of-way regulations include simplicity; better protection of the rights of an individual affected by a highway project; and consistency with the spirit and intent of the Uniform Act by adopting a uniform standard.

After FHWA has considered all comments received pursuant to this Notice, it will publish proposed regulations for comment.

Issued on June 22, 1976.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.76–18941 Filed 6–29–76;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 201]

[Reg. A; Docket No. R–0043]

EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

Seasonal Credit Provisions

The Board of Governors of the Federal Reserve System proposes to amend § 201.2(d) of Regulation A (Extensions of Credit by Federal Reserve Banks) to provide more flexible conditions under which member banks with well-defined seasonal requirements for loanable funds would be permitted to borrow from Federal Reserve Banks. The purpose of the proposed amendment is to enable member banks to increase their ability to serve their communities by providing them with a reliable source of short-term funds during periods of increased loan demand due to seasonal conditions.

Federal Reserve credit would be available to a member bank to the extent that the member bank's seasonal needs exceed certain established percentages of the bank's average total deposits in the preceding calendar year. Regulation A currently provides that a member bank must provide for that part of its seasonal needs that equals 5 per cent of its deposits. If the proposed amendment is adopted, under percentages to be established by the Board of Governors, it is expected that a member bank will be required to provide for that part of its seasonal need that equals 4 per cent of the first $100 million of deposits; 7 per cent of the second $100 million of deposits; and 10 per cent of any deposits over $200 million. Changes in these percentages will be annouced in the Federal Register. Seasonal credit will not normally be available to banks with deposits of $500 million or more since such banks ordinarily have ready access to national money markets.

In order to provide additional benefits to member banks, the minimum period during which the seasonal need for funds must persist would be reduced from the presently required eight weeks to four weeks. While member banks would be encouraged to arrange for seasonal credit in advance of their needs, the proposed amendment does not require such prearrangement in order to obtain seasonal credit. In utilizing the seasonal credit provisions, member banks would be permitted to modify their credit arrangements with Federal Reserve Banks.

Net sales of Federal funds and purchases of liquid assets by a member bank would not be regarded as inappropriate while using seasonal credit as long as the sales and purchases represent the member bank's normal operating pattern. A member bank will not be permitted to borrow from the discount window for the purpose of increasing sales of Federal Funds.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comments, or arguments. Any such material should be submited in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 23, 1976. All material submitted should include the docket number R–0043. Such information will be made available for inspection and copying upon request except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

This amendment is proposed under the authority of section 4 of the Federal Reserve Act (12 U.S.C. 301) to prescribe regulations defining the conditions under which credit may be extended to member banks and § 13 of the Federal Reserve Act (12 U.S.C. 347), which authorizes Federal Reserve Banks to extend credit to member banks. In consideration of the foregoing, the Board proposes to amend § 201.2(d) of Regulation A (12 CFR 201.2(d)) as follows:

§ 201.2 General principles.

* * * * *

(d) *Seasonal credit.* Federal Reserve credit is available for longer periods to assist a member bank in meeting seasonal needs for funds arising from a combination of expected patterns of movement in its deposits and loans. Such credit will ordinarily be limited to the amount by which the member bank's seasonal needs exceed certain percentages established by the Board of Governors of the bank's average total deposits in the preceding calendar year. Credit will be available if the Reserve Bank is satisfied that the member bank's qualifying need for funds is seasonal and will persist for at least four weeks. To the extent practicable, member banks should arrange in advance for seasonal credit for the full period during which such credit is expected to be required. In making arrangements for such credit, a Reserve Bank may agree to extend credit for a period of up to 90 days,[1] subject to compliance with applicable requirements of law at the time credit is extended. However, in the event that a member bank's seasonal needs should persist beyond such period, the Reserve Bank will normally be prepared to entertain a request by the member bank for further credit extensions under the seasonal credit arrangement.

* * * * *

By order of the Board of Governors, June 23, 1976.

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

[FR Doc.76–18946 Filed 6–29–76;8:45 am]

[1] As provided in the law and in this Part, the maturity of advances to member banks is limited to 90 days, except as provided in § 201.3(b) of this Part.

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1127]

[Ex. Parte No. 293 (Sub. No. 8)]

STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES AND EMERGENCY OPERATING PAYMENTS

Second Further Notice of Proposed Rulemaking

The Rail Services Planning Office (the Office) presently has under consideration the above-captioned rulemaking proceeding to develop regulations for the computation of commuter rail service continuation subsidies and emergency operating payments for certain commuter passenger services in the Northeast and Midwest Region which, under the Final System Plan (FSP) of the United States Railway Association (USRA) dated July 25, 1976, might have been discontinued in the absence of financial assistance. An initial Notice was published in the FEDERAL REGISTER of February 20, 1976 (41 FR 7793) and a Further Notice was published May 14, 1976 (41 FR 20104). Interested parties were invited to submit on or before June 15, 1976, their comments on the proposed regulations set forth in the Further Notice.

The Office received fifteen comments in response to its invitation from the Consolidated Rail Corporation (ConRail) and other commuter railroads, the National Railroad Passenger Corporation (AMTRAK), state transportation departments, commuter authorities, local and regional governmental bodies, the United States Department of Transportation (DOT), and the Office of Public Counsel. (The participants are listed at the end of this notice.) The Office indicated in its Further Notice that time permitting, it might issue another notice dealing with the significant issues raised in the comments.

Based upon its preliminary review, the Office has tentatively concluded that its conceptual approach comports with the statute (Sections 205(d) and 304 of the Regional Rail Reorganization Act of 1973 (the RRR Act) (Public Law 93-236) as amended by Sections 309 and 804 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the Rail Act) (Public Law 94-210)). It recognizes, however, that its position may not have been fully understood by the parties. Therefore, it believes it may be helpful to elaborate on the concept underlying the proposed standards, to state its tentative disposition of significant issues raised by the parties and to afford an additional opportunity for comment. The comment period must necessarily be limited since under Section 205(d)(5), the final standards must be issued and effective by August 3, 1976. The deadline for filing additional comments is July 15, 1976.

AVOIDABLE COST—CONCEPT

In the Final System Plan (pp. 44-46), USRA earmarked for discontinuance some thirteen commuter rail services in the Northeast and Midwest Region which were operated by railroads in reorganization but not covered by leases or contracts executed prior to January 2, 1974, the enactment date of the RRR Act. In the Rail Act, Congress, however, directed ConRail to operate these commuter services for 180 days after the April 1, 1976, conveyance date and to continue thereafter those services for which a financially responsible person offered a subsidy designed to cover the difference between the "revenue attributable" and the "avoidable costs" of providing the service plus a "reasonable return" on the value of the properties used (Sections 304(c)(2) and 304(e) of the RRR Act).

Congress also authorized $125,000,000 in Federal emergency operating assistance to sustain these operations over a 2½ year period (Section 17(f) of the Urban Mass Transportation Act of 1964) and instructed the Office to develop standards for computing the subsidies and for determining the emergency operating payments. Specifically, the Office was directed to issue regulations containing:

(A) standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))), which are consistent with the compensation principles described in the final system plan and which avoid cross subsidization among commuter, intercity, and freight rail services; and

(B) standards for the determination of emergency commuter rail passenger service operating payments pursuant to section 17 of the Urban Mass Transportation Act of 1964 (Section 205(d)(5) of the RRR Act).

The threshold issue is what cost concept should the Office adopt in developing the standards? The New Jersey Department of Transportation (NJDOT) asserts that Sections 205(d)(5), 304(c)(2), and 304(e)(4) of the RRR Act (pp. 40-41) "mandate the determination of commuter rail passenger service subsidies on an avoidable cost basis" and that legislative history supports its view. NJDOT advocates that the standards should charge to commuter service strictly avoidable or incremental costs, i.e., "those costs which would not be incurred if the commuter service did not operate."

NJDOT relies upon the initial Conference Report on S. 2718 (Report No. 94-585, dated December 18, 1976) which states (at pp. 187-88) that the conference substitute for the rail passenger service provisions are "similar to the proposals made by Senator Harrison Williams and Congressmen James Howard and James Florio." These proposals as well as the bill reported out of the House were limited to the "avoidable cost" concept. However, the same report also notes that the language adopted in the Act follows the Senate bill which provided that the "standards must be consistent with the compensation principles established in the Final System Plan and must avoid cross-subsidization" rather than the House language which specified "avoidable cost" as the standard.

The final Conference Report on S. 2781 (Report No. 94-781, dated January 23, 1976) retains the Senate approach:

As provided for in the House amendment, the Rail Services Planning Office (RSPO) is directed to set the standards for rail passenger payments, however, as provided in the Senate bill, the guidelines RSPO must follow must be consistent with the compensation principles established in the final system plan and must avoid cross-subsidization. This section has been relocated in title III of the bill and included in the section containing the other provisions relating to the duties and responsibilities of RSPO.

It is clear that both concepts were before the Committee of Conference and that the strict avoidable cost concept was not adopted. The references to the legislative proposals of Senator Williams and Congressmen Howard and Florio are omitted from the final Conference Report on S. 2718. Thus, it is reasonable to infer that Congress expected the Office not to confine itself to the strict avoidable cost principle advocated by NJDOT.

In *State of Pennsylvania* v. *Interstate Commerce Commission*, U.S.C.A., D.C., Case No. 75-1529, decided March 31, 1976, Pennsylvania and New York attacked the regional freight standards (49 CFR 1125) because they included variable off-branch costs. The States asserted that the Office was bound by the definition of "avoidable costs" which Congress directed the ICC to develop in connection with the settlement price to be paid by AMTRAK to a railroad when assuming its loss-incurring passenger responsibility (Passenger Service Act of 1970, 45 U.S.C. 501). In rejecting this contention, the Court observed:

There is implicit recognition in the RSPO [regional] regulations that its definition of "avoidable costs" was a novel one, and this presents something of an anomaly since the same words—"avoidable costs"—are used by Congress in both statutes. But a word "is not a crystal, transparent and unchanged," and it takes on the hue of its surroundings, so that the same word may mean different things in different sections of the same statute, and certainly in different, though related, statutes. *Towne* v. *Eisner*, 245 U.S. 418, 425 (1917); *Lamar* v. *United States*, 240 U.S. 60, 65 (1915). (Slip Opinion, p. 6).

In approaching its task of determining the standards for commuter subsidies and emergency operating assistance, the Office found itself not only in different statutory surroundings, but also confronted with different factual circumstances than those in which the regional standards were developed, rendering a slavish reliance on even those standards previously issued by itself for different purposes inappropriate to the task at hand. In its Further Notice, the Office reasoned:

Complete reliance on directly identifiable costs or solely-related costs would result in cross subsidization, since those portions of common variable costs affected by the continuance of commuter services would, under this method, be borne by the other service (41 FR 20107); and

In fairness and equity to ConRail, the commuter authorities should bear some

portion of common costs, where commuters make significant use of the rail properties. However, where commuters make insignificant use of the rail properties, it would appear impractical to require the collection of the data necessary to apportion common costs * * *. Commuter services falling within the insignificant category will be obliged to pay only actual direct costs of providing the service, plus an overhead allowance to compensate for indirect costs, as negotiated by the parties (41 FR 20105).

The Office's concept of distributing costs is patently consistent with the statutory admonition to avoid cross subsidization as well as with the compensation principles of the Final System Plan. The cost allocation principles of the FSP do not dictate a strict avoidability approach, but rather are phrased in terms of equitable sharing among joint, dominant or equal users (at p. 41); that is,

> Commuter and intercity entities jointly using an exclusive passenger facility should allocate costs "on an equitable basis";
> Passenger and freight services using a facility on an "equal basis" should allocate costs "equitably";
> But where one of the three services entities (intercity, commuter or freight) is not a dominant user of a facility, the other users should bear all the costs of that facility "except those which could be avoided if the minority user were not present."

The proposed commuter standards provide for an equitable sharing of costs by significant (equal or dominant) users of joint facilities and the payment of incremental costs by insignificant (minority) users, plus a negotiable allowance to compensate for overheads.

USRA recommended that ConRail negotiate new operating agreements for those commuter services not covered by pre-act leases or contracts (see section 303(b)(2) of the RRR Act) and proposed a model agreement, which contemplated that the authorities would pay "net avoidable costs" (FSP, at p. 45). NJDOT cites this language in support of its contention that the compensation principles described in the Final System Plan mandate a strict avoidable cost approach.

The Office disagrees. Under the model agreement, "net avoidable cost" includes "out of pocket expenses" and "overhead expenses attributable to passenger service." These descriptive terms are susceptible to different interpretations. Out of pocket expenses could reasonably be equated with incremental expenses while overhead expenses arguably could connote a fully distributed costing technique. Hence, the Office is unable to conclude that USRA was advocating a strict avoidable cost approach.

It should be emphasized that the proposed standards adopt in large measure the cost development techniques suggested by NJDOT. The standards require the railroad and the prospective subsidizer to develop a comprehensive facilities plan and, as noted below, will also provide for a manning table. The proposed standards also adhere to the strict avoidability concept in the valuation of properties (41 FR 20108) because the return on that valuation is a fixed cost. In other instances, the standards depart from a strict avoidability principle to allocate to the subsidizer a share of the common costs which would vary with the continuation of commuter service (41 FR 20107). These allocation formulae are not obligatory. The parties are encouraged to fashion terms tailored to their unique circumstances and may substitute in whole or in part avoidability criteria for apportionment formulae. The Office would not expect to disapprove such variations which are the product of arms-length negotiations.

Development of Data

The proposed standards would require the railroad and commuter authority to develop a comprehensive facilities plan itemizing the properties used and useful in providing the commuter service and noting changes that would occur in each item if service were discontinued. While the parties are encouraged to work cooperatively, the commuter authority is designated the final arbiter as a "fail safe" procedure for completing the plan in the event of a stalemate. ConRail, AMTRAK and NJDOT variously attack this proposal as impractical, inequitable and unconscionable. Their point is well taken and the Office will delete this provision from the standards.

Upon consideration of the comments, the Office has reformulated its concept regarding the development of the pertinent revenue cost data. Briefly, the standards would be revised to specify the following procedures:

(a) *Facilities Utilization Plan.* The parties would develop a comprehensive facilities utilization plan itemizing the properties and equipment used and useful in providing the commuter service. These properties would be divided into two categories—those devoted exclusively and those devoted partially to providing commuter service. The solely related costs would be attributed directly to the commuter service. The costs of common facilities would be assigned to commuter service first on a basis negotiated by the parties. The parties may decide to rely on historical data or to conduct special studies (with the expense thereof to be shared) or to develop their own apportionment formulae based on use or a combination of the foregoing. Upon request of either party, the Office would undertake to mediate disagreements concerning any element of the facilities utilization plan—the properties to be included, the segregation of solely related from common costs, and developing the methodology for assigning common costs.

Second, if mediation is inconclusive as to common costs, the apportionment formulate specified in the standards would be applied subject to the condition that either party may request a special study. The requesting party would be responsible for designing the study, obtaining the other party's approval of the design, supervising the conduct of the study, and bearing exclusively the expenses thereof which would not be reimbursed as an avoidable cost. Disputes regarding the design and conduct of the study would be submitted to the Office for resolution and its decision would be binding. The results of the study would be binding on both parties unless they mutually agree to disregard same.

(b) *Manpower Utilization Plan.* A manpower utilization plan is analogous in concept to the facilities utilization plan. The parties would develop manning tables identifying the railroad forces used in providing commuter service and specifying the percentage of time of these forces devoted to such work. The procedures described above for the development of the facilities utilization plan would also be followed in developing the manpower utilization plan.

(c) *Other Costs.* It is expected that the manpower utilization plan along with the facilities utilization plan, will remove most, if not all, of the problems of assigning common variable costs between commuter and other services of the railroad. As to the balance, solely related commuter costs would be directly assigned to the commuter service and common costs would be allocated in accordance with RSPO apportionment standards.

Insignificant Use

The proposed standards place the dividing line between significant and insignificant use of rail properties by commuter authorities at 10 percent of total train time on the rail line. The proposed standards also authorize the commuter authority to segment its overall service into areas of significant and insignificant use. Insignificant users would pay incremental costs, plus a negotiated allowance for overheads.

Maryland Department of Transportation, a prospective insignificant user of rail properties between Baltimore and Washington, endorses the concept of insignificant use, but urges that the allowance for overheads be limited to common variable costs and exclude fixed costs. ConRail also endorses the general concept, but requests the Office to establish a procedure for determining allowable overheads in the event the parties are unable to agree upon an appropriate figure. NJDOT questions the use of percentages to demarcate significant and insignificant use and argues that train time should not be the sole measure of significance. AMTRAK claims that any allowance for overheads robs the "significant/insignificant dichotomy" of substantive meaning. DOT believes both the proposed 10 percent demarcation and the train time criterion warrant further study and suggest that if adopted in the final standards, they should be subject to review to determine whether better standard are appropriate or feasible.

The Office is in essential agreement with NJDOT. All commuter authorities must bear their direct costs and some portion of common costs to avoid cross subsidization. Undoubtedly, there are circumstances where the commuter use is so incidental that it is impractical to re-

quire the collection of data necessary to apportion common costs. We think it sufficient to recognize the likelihood of incidental use, and let the parties decide what circumstances, (i.e., the percentage and measure of use) would impel them to negotiate an overhead allowance in lieu of rigorous apportionment of common costs. Of course, absent an agreement on overhead, the general procedures on apportioning common variable costs would apply.

SERVICES USING AMTRAK OWNED RIGHT-OF-WAY

On April 1, 1976, ConRail transferred to AMTRAK main line and certain contiguous rail properties in the Northeast Corridor, but retained separate easements for the operation of commuter passenger service and ConRail's own freight service. ConRail and AMTRAK also entered into a management agreement whereby AMTRAK assumed (or will assume) maintenance of way and accounting and record keeping responsibilities pertaining to the Northeast Corridor properties. ConRail and AMTRAK also negotiated a commuter operating agreement allowing ConRail to use corridor properties for commuter service in return for payment of trackage right fees; the parties have agreed upon interim compensation which is to be adjusted retroactively when final compensation is determined. The commuter agreement provides that the final costing methodology is either to be agreed upon by the parties or determined by the Commission under Section 402(a) of the Rail Passenger Service Act.

ConRail and AMTRAK also negotiated a maintenance of commuter equipment agreement under which AMTRAK has agreed to maintain commuter equipment used in the Northeast Corridor at the maintenance of equipment facilities acquired by it. This agreement provides that upon adoption, the Office's standards will determine AMTRAK's compensation for the commuter maintenance performed by it; however, AMTRAK has the right to terminate the agreement if it is not satisfied that it is being fully reimbursed for the services performed.

In its comments, ConRail takes the position that the compensation it pays to AMTRAK for maintenance of commuter equipment, accounting and record keeping, and commuter trackage rights fees are direct costs for which ConRail should be reimbursed; that the apportionment formulae set forth in the regulations with respect to common cost do not apply to such compensation and that if its commuter costs are allocated on bases other than those set forth in the Office's standards, the actual allocation rather than the standards should apply.

AMTRAK agrees with ConRail that the proposed standards should not determine the compensation AMTRAK will receive from ConRail for the use of corridor properties and services. AMTRAK asserts that under section 402(a) of the National Passenger Service Act, it is entitled to charge ConRail not only the avoidable cost of commuter operations but also a fair and equitable share of AMTRAK's constant base cost. AMTRAK urges the Office to clarify the standards to remove any doubt as to the commuter service obligation to share these base costs.

DOT is concerned that if the standards allow ConRail to pass directly to commuters the costs incurred for the use of AMTRAK facilities and services, ConRail will have little incentive to strike a hard bargain with AMTRAK. DOT urges that the commuter authorities be afforded an opportunity to challenge the fairness and reasonableness of such costs although it would place a heavy burden of proof upon the authorities.

ConRail too acknowledges the interest of commuter authorities in the compensation principles applicable to the ConRail-AMTRAK commuter agreement. ConRail states it is "* * * fully cognizant of its responsibilities to represent those interested appropriately in any negotiations regarding costing methodology. As a practical matter, ConRail anticipates that unless the parties agree upon the adoption of the Office's costing methodology set forth in its standards, ConRail and AMTRAK will submit the issue to the Commission * * *" for resolution.

The Office agrees in principle with ConRail, AMTRAK and DOT that the compensation paid by ConRail to AMTRAK for the use of AMTRAK properties and for services should be passed through to the commuter authorities. The Office also agrees with DOT that the commuter authorities must be afforded an opportunity to challenge the reasonableness of the compensation. In our view, the primary measure of reasonableness should be the standards adopted by the Office. The compensation principles underlying section 402 (a) of the Rail Passenger Act and section 304(c)(2)(A) of the RRR Act are strikingly similar. Section 402(a) calls for fair and equitable compensation while prohibiting cross subsidization. The RRR Act and the Final System Plan speak in terms of the equitable sharing of costs which avoids cross subsidization among freight, intercity passenger, and commuter services. Hence, in resolving this issue, the Office is placing special reliance upon ConRail's assurances that it will represent commuter interests in its negotiations with AMTRAK and that if the parties cannot agree to follow the Office's costing methodology, they will submit the matter to the Commission for resolution.

The Office cannot accept as an abstract proposition that section 402(a) entitles AMTRAK to charge ConRail a "fair and equitable share of (AMTRAK's) constant cost base." The assignment of fixed costs (those which AMTRAK would incur irrespective of whether commuter service is operated over its properties) as a direct pass through to the commuter authorities, would result in cross subsidization of intercity service by commuter service. Both section 701(a) of the Rail Act and section 402(a) of the Passenger Service Act expressly prohibit cross subsidization between such users of common facilities. Moreover, section 701(a) authorizes AMTRAK to enter into compensatory agreements for the "reimbursement" of the costs of providing commuter service. Reimbursement clearly includes the repayment of solely related and common variable costs incurred in providing commuter service over AMTRAK properties. However, it is difficult to conceive how AMTRAK is to be reimbursed for the fixed costs it would incur even if commuter services were not operated over its properties.

Another area of concern relates to AMTRAK's position on rate of return. AMTRAK has objected that the return of 7.5 percent on the value of the properties allowed in proposed § 1127.7 of the standards is too low and "does not even cover AMTRAK's interest expense in financing the purchase of the corridor assets." It recommends a floating rate, "such as the AAA bond rate." The Office understands that in AMTRAK's freight operating agreement with ConRail the stated interest rate is 50 basis points over the currently-published Moody's AAA industrial bond yield application of that rate at present would yield 8.9 percent, or 140 basis points more than the 7.5 percent return in the proposed standards.

ConRail acquired the corridor properties in a non-cash transaction with the Penn Central estate, and its costs of funds are fixed by the statute at 7.5 percent. In the absence of cogent arguments supporting a contrary view the Office would consider it unreasonable for such an override above ConRail's cost of funds to be imposed on the commuter services as a result of a commuter service operating agreement between ConRail and AMTRAK.

APPORTIONMENT FORMULAE

The Office, after reviewing all the comments, proposes to modify certain common cost methodology set forth in proposed § 1127.5. First, the final standards woud reflect new language that assigns costs at joint facilities to commuter operations on the same method of apportionment incorporated in the specific joint facility agreements. This would permit all 12 joint facility accounts to be considered on the basis of the individual agreements. (The four joint facility accounts under § 1127.4—Revenues would be handled in the same manner.)

A second significant area of adjustment involves all the labor-related accounts, such as Superintendence, Dispatching Trains, Station Employees, Yard Masters, etc., Trainmen and Enginemen, all of which will be identified in the Manpower Utilization Plan. This would minimize or eliminate the common costs assigned to commuter service by apportionment formulae.

There are several other changes of a less significant nature which deal with specific accounts.

(a) *Account 253—Power Plants.* Considerable criticism was received on the apportionment factor used by the Office to determine the commuter service portion of this account. The Office recog-

nizes that kilowatt hours is an inappropriate measure, and will substitute the relative use of facilities utilizing power plants. (*Account 227—Station and Office Building, Account 235—Shops and Enginehouses.*)

(b) *Account 257—Power—Transmission Systems.* Comments were received from numerous parties expounding the difficulties of aggregating pantograph miles. The Office proposes to apportion this account on kilowatt hours in lieu of pantograph miles.

(c) *Account 266—Road Property—Depreciation.* After reviewing the comments, the Office feels that the terminology should read "* * *, excluding properties provided by public bodies."

(d) *Account 247—Communication Systems.* The apportionment of this account as an overhead account to maintenance of way and structures brought criticism from several parties. The Office feels this criticism has merit and proposes to apportion this account based on the labor accounts related to communications systems use. This methodology would also apply to the non-labor portion of account 407—Communication System Operation.

(e) *Account 395—Train Power Produced, Account 396—Train Power Purchased.* Several parties commented on lack of recognition of the peak power demand charges in developing a reasonable apportionment to commuter service. The Office recognizes the need to incorporate this factor in the apportionment and invites specific proposals as to the means for implementing this recommendation in the standards.

(f) *Account 402—Train Supplies and Expenses.* After reviewing the standards and the comments of the parties, the Office proposes to apportion this account on cars dispatched.

Finally, proposed § 1127.5(k) will be revised to include assignment on total wages, not just direct wages.

Value of the Properties

No allowance was made in proposed § 1128.6 for a working capital component of the investment base on which the reasonable return is provided, because most passenger fares are paid in advance; because proposed § 1127.3 required estimated subsidy payments to be made in advance; and because section 304(c)(2)(C) of the RRR Act absolves the operator of the obligation to continue service if any payment is not made when due. ConRail construes the 60-day waiting period of section 304(a)(1)(B) of the RRR Act to apply to discontinuance for late payment; it requests the imposition of interest at one percentage point over prime as a penalty for overdue amounts. AMTRAK also urges a penalty without suggesting a rate. Southeastern Pennsylvania Transportation Authority (SEPTA) argues that, since its funds are obtained from government sources; it cannot guarantee exact payment dates. It urges the Office to revise proposed § 1127.3(e) of the standards to specify a 90-day interest-free period in which a subsidizer might cure any default in payments.

It would be impracticable and undesirable if the operator's only recourse in the event of delayed payments were to be abrupt service discontinuance or threats thereof. The Office believes that a fair resolution of this question is to revise proposed § 1127.3(e) of the standards so that interest on overdue payments will accrue at 100 basis points over current prime for such period as the operator agrees to waive any rights to terminate service. Interest accrued on overdue payments under this section will be excluded from avoidable costs for the purpose of computing emergency operating assistance payments under proposed § 1127.8. Proposed § 1127.8 also will be revised, as AMTRAK proposes, to provide for advance payments by UMTA against the estimated amounts of emergency operating assistance owed to either the operator or the subsidizer. These revisions should minimize the potential for adverse impact on the operator occasioned by late receipts from subsidizers.

Emergency Operating Assistance

(a) *Level of Service.* Several of the responses took exception to the level of service provisions of proposed § 1127.8(d) of the standards and to the discussion of this subject in the Further Notice under Applicability of the Standards (41 FR 20104–05). These responses make apparent the necessity of providing in the standards for seasonal fluctuations of service, for service reductions below the level prevailing immediately prior to April 1, 1976, and for the costs of service termination.

(1) *Reduction in Service.* Proposed § 1127.8(d) presently provides that modifications in the level of service may be made so long as the total amount of emergency operating assistance provided by UMTA is not thereby increased. The statute does not contemplate that the commuter authorities should be required to choose between subsidizing all or none of the services previously being provided; should changes in economic conditions, ridership, or availability of funds dictate reductions in service on one or more routes not wholly offset by increased services on other routes subsidized by the same authority, the intent of the standards is that the amount of subsidy required to be paid for the continuation of the desired services will be appropriately reduced, with proportionate reductions of the emergency operating assistance. In the usual such case, the amount of the reduction would flow automatically from changes in the factors entering into the calculation of net avoidable loss and reasonable return in accordance with §§ 1127.4–1127.7. There may be instances, however, when the parties to a commuter service subsidy agreement consider the costs involved in restating facilities plans or manning tables would be disproportionate to the amount of reduction; such instances could be covered by provision in the subsidy agreements for reductions in appropriate elements of the subsidy payments based on the reductions in train miles or car miles.

(2) *Service Terminations.* NJDOT agrees with ConRail's interpretation that the 60-day delay period of section 304(a)(1)(B) of the RRR Act applies to service discontinuances under section 304(e)(2), and urges that the reimbursement from UMTA during the 180-day mandatory period should include provision for coverage of this situation. It is not entirely clear that this is a correct interpretation of the statute, but if it is correct, ConRail or any other railroad should be compensated for losses sustained as a result of enforced service continuance resulting from Federal laws or regulations.

(b) *Service on New Routes.* NJDOT argues that, although the Office's interpretation of the applicability of the standards to new services at 41 FR 20104 may be supportable for service provided during the 180-day mandatory period a carrier is obliged, under section 304(e)(4) of the RRR Act, to provide "rail passenger service" over rail properties not owned by AMTRAK after the mandatory period whenever a State offers a rail service continuation payment conforming to the RSPO standards. Since section 304(e)(4) requires that "the Corporation (or a profitable railroad) shall continue to provide such service after the end of such period," it is difficult to find in this a requirement that the carrier also provide services not operated during the 180-day mandatory period or prior to it. For the purposes of these proceedings, the only pertinent question is whether such services over new routes would be eligible for emergency operating assistance, and the answer is clearly that they would not.

(c) *Fare Increases.* Proposed § 1127.8(e) provides that the revenues derived from fare increases shall be included in determining the revenue attributable to the commuter service for the purpose of determining emergency operating assistance payments. DOT and SEPTA disagree with this approach; NJDOT believes it should be retained. The Office has under consideration four alternative treatments of fare increases for the purpose of determining the amounts of emergency operating assistance.

(1) *Include All Fare Increase Revenue in Attributable Revenue.* Proposed § 1127.8(e) would remain unchanged. This treatment would obviate the necessity of maintaining separate records as to the amount of revenues derived from fare increases and would reduce the amounts of emergency operating assistance payments. The disadvantage of this alternative is that during the first 360 days of the emergency operating assistance program there would be no incentive for commuter authorities to increase fares; during the succeeding 12 months they would benefit from only 10 percent of the added revenues; and during the final 180 days only 50 percent. At the end of the emergency assistance program, the authorities might have to institute sharp fare increases to continue service without Federal assistance.

(2) *Credit No Revenues from Fare Increases to Attributable Revenues.* Records would have to be kept segregating the revenues resulting from fare increases and the emergency operating assistance funds would receive no benefit from them. The subsidizers would receive the entire benefit, possibly permitting them to accumulate reserves which would mitigate the scope of fare increases necessary after the close of the assistance program. Subsidizers would have maximum incentive to initiate fare increases as indicated by increased costs or other appropriate factors. Stated differently, they would retain entire responsibility for fares policy.

(3) *Credit One-Half of Revenues from Fare Increases to Attributable Revenues.* This admittedly is a somewhat arbitrary division of any fare increase benefits but it offers the advantage of simplicity; both the subsidizers and the emergency operating assistance funds would benefit from increases; all subsidizers would in proportion to increases initiated by them; and all would have the same opportunity to accumulate "buffer" reserves.

(4) *Credit Attributable Revenues with Revenues from Fare Increases Proportionate to the Subsidizer's Contribution to Total Support Payments.* The Office anticipates that there will be some instances in which the commuter authority's present payments of financial assistance equals a high proportion, or possibly all, of the required subsidy payments under the standards, thus occasioning little or no emergency operating asssitance. In other instances, the financial assistance presently being provided by the authority is small or even zero, requiring the emergency operating assistance to cover a large proportion of the total subsidy burden resulting from the standards.

As examples, if the treatment of fare increases proposed under this heading were adopted, an authority presently providing 90 percent of the total subsidy required would retain 90 percent of the revenues resulting from any fare increase during the periods of 100 percent UMTA assistance; 91 percent during the 90 percent assistance period; and 95 percent during the six months of 50 percent UMTA assistance. In contrast, an authority presently providing only 10 percent of the total subsidy would retain only 10 percent of a fare increase initially; 19 percent during the 90 percent Federal assistance period; and 55 percent in the final 50 percent assistance period. Thus, those authorities which are presently covering only a small proportion of the avoidable losses would have the least incentive under this proposed treatment to increase fares and thereby reduce the losses.

It should be noted that this discussion relates only to the treatment of fare increases for the purpose of computing the amounts of emergency operating assistance, and not to the computation of net avoidable loss and reasonable return for the purpose of determining the required subsidy. The comments of interested persons are specifically requested with respect to these alternative means for treating fare increases in the computation of emergency operating assistance. Other alternative proposals may also be submitted.

(d) *Assistance during the 180-Day Mandatory Period.* The New Jersey Department of Transportation (NJDOT) and the Office of Public Counsel both suggest that § 1127.8(b) of the proposed standards is superfluous and recommend deletion of this subsection. They hold that section 17(a)(2) of the UMTA Act permits emergency operating assistance payments to subsidizers only after the close of the 180-day mandatory period; and that all such payments during the mandatory period must be made to the operator of the services under section 17(a)(1). However, they may have overlooked section 17(d)(1) of the UMTA Act, providing that the Federal share of the costs of any rail passenger service required by sections 304 (c) and (e) of the RRR Act shall be "100 percent of the costs eligible under subsection (a)(1) *or* (a)(2) of this section for the 180-day mandatory period required by section 304(e) of such Act." (Emphasis supplied).

The Office believes that the Congressional intent was to provide for reimbursement of additional costs incurred by subsidizing entities during the mandatory period related to the service-continuation program but not properly reimbursable to the operators. Such costs might include, for example, expenditures incurred prior to September 27, 1976 by subsidizers in making studies, developing facilities plans, or otherwise preparing an offer of subsidy. Proposed section 1127.8(b) of the standards will be revised to make clear that it does encompass only such costs, and that emergency operating assistance payments under this sub-section shall not be duplicative of any reimbursement made under subsection (a). Even as so revised, this subsection might, in fact, prove to be unnecessary because the costs allowed under it could be reimbursed under proposed § 1127.8(c), the only difference being the timing of payments.

Miscellaneous Items

(a) *Access to Records—Audit—Inspection.* Some of the responses raised questions concerning the necessity for access to the records of the operators; others urged that the standards contain provisions dealing with excessive overhead charges, erroneous billing, lost shipments, cars out of service for lack of parts provisioning, damage to equipment through fault of the operator, and similar items.

The final standards issued August 3 will contain provisions requiring that the records of the operator be avaliable for inspection or audit by the subsidizer, the Commission, or UMTA at all reasonable times, and that copies of such records be furnished, when requested, at reasonable cost. The Office does not believe that the details of the contractual arrangements for continuation of commuter services should be dealt with in the standards; it does believe that the commuter authorities eligible to receive emergency operating assistance should be held responsible both for including in their agreements with operators adequate conditions assuring honest, economical performance under those agreements, and for the necessary audits, inspection, and follow-up to insure such performance. We expect that the regulations issued by DOT will include such a requirement; and the costs of reasonable audit and inspection will be allowed as avoidable costs.

(b) *Commuter Common Costs.* ConRail is concerned that questions will arise as to allocation of costs which are "common to more than one commuter or passenger service but which are direct to commuter or passenger service in its entirety;" and which might not be considered strictly available as to a particular commuter service. Examples quoted by ConRail are management personnel, accounting, and reporting services solely for commuter and other passenger operations. These are variable, not fixed, costs; and the standards will provide that each commuter service should bear an appropriate share. The suggestions of interested persons are requested as to the appropriate measures for apportionment of such costs among commuter authorities.

ConRail also expresses the view that, although the Office cannot require any commuter authority to share in the support of a service which is performed in two or more jurisdictions, it should promulgate standards which would be operative in the event the authorities cannot agree on the apportionment of the subsidy burden between them. The Office believes that the initial responsibility for such apportionment should rest with the authorities concerned but the standards will provide that in the event of failure to agree, the burden shall be divided on the basis of car miles operated in each jurisdiction.

(c) *Data Availability.* ConRail agrees to the necessity for the expedited procedure contained in the proposed standards for preparing the subsidy estimates prefatory to the offers of financial assistance. However, it notes that it will not have sufficient data or time to prepare initial subsidy estimates on the basis of three months cost figures within the proposed deadline. It recommends that it be permitted to utilize the best data available, including data from predecessor railroads in reorganization. This appears to be reasonable, provided that the estimates are prepared on the basis of attributable revenues, available costs, and reasonable return conforming to the standards; and the proposed standards will be revised to so provide.

(d) *Regional Standards.* ConRail notes, properly, that under the present regional standards (49 CFR 1125) certain passenger train revenuese and costs are included which duplicate revenues and costs under the standard herein. A proposed revision of the regional standards is in preparation which will eliminate these duplications.

The Office is publishing this second further notice of proposed rulemaking in order to inform the parties of its tentative disposition of significant issues raised by its previous notice published in the FEDERAL REGISTER of May 14, 1976 (41 FR 20104), and to afford further opportunity for comment. All persons interested in filing statements of their views on the proposed standards are invited to do so. An original and six copies of any statements should be submitted on or before July 15, 1976, to: Rail Services Planning Office, Interstate Commerce Commission, Washington, D.C. 20423.

The Office will issue a further notice containing final standards to be effective August 3, 1976.

By the Commission, Rail Services Planning Office.

ROBERT L. OSWALD,
Secretary.

PARTIES FILING PETITIONS

GOVERNMENT

Federal

U.S. Department of Transportation, Office of Public Counsel.

State

Pennsylvania Department of Transportation.
New Jersey Department of Transportation.
Maryland Department of Transportation.
New York State Department of Transportation.

Regional

Metropolitan Transportation Authority, N.Y.
Southeastern Pennsylvania Transportation Authority.
Northwestern Indiana Regional Planning Commission.
Massachusetts Bay Transportation Authority.

City

Philadelphia, Pennsylvania.

ASSOCIATION

National Newspaper Association.

RAILROAD

Consolidated Rail Corporation.
National Railroad Passenger Corporation (AMTRAK).
Chicago Area Commuter Railroads:
Burlington Northern, Inc.
Chicago & North Western Transportation Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad Co.
Chicago, Rock Island & Pacific Railroad Co.
Chicago, South Shore & South Bend Railroad Co.
Illinois Central Gulf Railroad Co.

[FR Doc.76-18920 Filed 6-29-76;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1928]

[Docket No. S-307]

OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE; FIELD SANITARY FACILITIES

Clarification; Extension of Comment Period; Correction

FR Doc. 76-19033 published in the FEDERAL REGISTER on June 29, 1976 (41 FR 26716) is corrected as follows:

The date "July 20, 1976" contained in the last paragraph of FR Doc. 76-19033 is changed to read "August 16, 1976".

Signed at Washington, D.C., this 29th day of June 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-19154 Filed 6-29-76;11:23 am]

notices

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

DEPARTMENT OF STATE

[Public Notice CM-6/68]

SHIPPING COORDINATING COMMITTEE SUBCOMMITTEE ON SAFETY OF LIFE AT SEA

Meeting

The working group on bulk chemicals of the Subcommittee on Safety of Life at Sea, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:00 a.m. on Wednesday, July 21, 1976, in Room 8334 of the Department of Transportation, 400 Seventh Street, S.W. Washington, D.C.

The purpose of the meeting will be to:

Review the outcome of the First Session of the Subcommittee on Bulk Chemicals of the Intergovernmental Maritime Consultative Organization (IMCO) held in London May 17–21, 1976.

Begin preparations for the Second Session of the Subcommittee on Bulk Chemicals scheduled to be held in London January 24–28, 1977 (tentative) particularly with respect to (a) hazard evaluation of noxious liquid substances and (b) procedures and arrangements for the discharge of noxious liquid substances.

Requests for further information on the meeting should be directed to Mr. R. J. Lakey, United States Coast Guard. He may be reached by telephone on (area code 202) 426–2170.

The Chairman will entertain comments from the public as time permits.

SAMUEL V. SMITH,
Acting Director,
Office of Maritime Affairs.

JUNE 23, 1976.

[FR Doc.76-18938 Filed 6-29-76;8:45 am]

[Public Notice CM-6/67]

STUDY GROUP 5 OF THE U.S. NATIONAL COMMITTEE OF THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 5 of the U.S. CCITT National Committee will meet on July 21, 1976, at 10:30 a.m. in Room 1406 of the Department of State, Washington, D.C. This Study Group deals with matters in telecommunications relating to the development of the international digital data transmission services.

The agenda for the July 21 meeting will include consideration of the following:

1. U.S. position with respect to patents in CCITT Recommendations;

2. Review of accomplishments of the February/March meetings of CCITT Study Groups VII and Special A;

3. Results of June 1976 International Standards Organization (ISO) meeting, specifically with respect to CCITT Draft Recommendation X.25 (Packet Switching);

4. Numbering plan for data networks;

5. Other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to July 21, members of the general public who plan to attend the meeting inform their name and address to Mr. T. de Haas, Chairman of U.S. Study Group 5. Mr. de Haas can be contacted at the Institute for telecommunication Sciences, Office of Telecommunications, Department of Commerce, Boulder, Colorado 80302, telephone number (303) 499–1000, ext. 3728; or persons in the Washington, D.C. metropolitan area may contact Mr. Arthur Freeman, Department of State, by telephoning 632–1007. All non-Government attendees must use the C Street entrance to the building.

ARTHUR L. FREEMAN,
Chairman,
U.S. National Committee.

JUNE 22, 1976.

[FR Doc.76-18939 Filed 6-29-76;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 76-6; Reference: ATF O 1100.63]

ACCEPTANCE OR REJECTION OF OFFERS IN COMPROMISE

Delegation of Authority

1. *Purpose.* This order delegates the authority to accept or reject certain offers in compromise of liabilities incurred under Chapters 51, 52, 53, and 78 of the Internal Revenue Code, and of liabilities incurred under the Federal Alcohol Administration Act.

2. *Cancellation.* The following ATF Delegation Orders are canceled:

a. Delegation Order No. 25, Authority to Accept or Reject Certain Offers in Compromise Under Chapters 51 and 53, dated July 1, 1972.

b. Delegation Order No. 28, Authority to Accept or Reject Offers in Compromise Under Chapters 51, 52, 53, I.R.C., dated July 1, 1972.

c. Delegation Order No. 40, Offers in Compromise Under the Federal Alcohol Administration Act, dated October 10, 1972.

3. *General.* The authority to accept or reject offers in compromise of liabilities arising under Chapters 51, 52, and 53, and sections 7652 and 7653 (Chapter 78) of Title 26 U.S.C., is vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221 dated June 6, 1972, and by 26 CFR Section 301.7122-1. The authority to accept or reject offers in compromise submitted pursuant to the provisions of the Federal Alcohol Administration Act is vested in the Director by Treasury Department Order No. 221, dated June 6, 1972.

4. *Delegations.* Pursuant to the authority vested in the Director of ATF by Treasury Department Order No. 221, subject to the limitations contained in applicable regulations and procedures, there is hereby delegated the following authority relating to offers in compromise of liabilities arising under Chapters 51, 52, 53, and 78 of Title 26 U.S.C., and of liabilities arising under the Federal Alcohol Administration Act.

a. *Regional Directors.*

(1) Each regional director is authorized to accept or reject offers in compromise of tax liabilities arising from:

(a) Chapter 51, Title 26, U.S.C., as follows:

1 Illegal production of untaxpaid distilled spirits, wines, or beer, and

2 Failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, or beer.

(b) Chapter 53, Title 26, U.S.C. (Firearms making, transfer, and occupational taxes).

(2) Each regional director is authorized to accept or reject offers in compromise of criminal liabilities of retail dealers in liquor arising from violations of the Internal Revenue laws relating to liquor, including the reuse of liquor bottles.

(3) Each regional director is authorized to accept or reject offers in compromise of all civil and criminal liabilities arising under Chapter 52, Title 26, U.S.C. (cigars, cigarettes, and cigarette papers and tubes).

(4) This authority may not be redelegated.

b. *Assistant Director, Regulatory Enforcement.*

(1) The Assistant Director (Regulatory Enforcement) is authorized to accept or reject offers in compromise of civil and criminal liabilities arising under chapters 51, 52, and 53 of the Internal Revenue Code in cases not subject to compromise by regional directors (including cases where singular offers are submitted on behalf of proprietors who

are located in different regions), and in cases which combine liabilities arising under Chapter 51 and the FAA Act. With respect to civil liability, the authority to accept or reject such offers in compromise is limited to cases in which the liability sought to be compromised (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $100,000. This authority may be redelegated, but not below the division chief level.

(2) The Assistant Director (Regulatory Enforceement) is authorized to accept or reject offers in compromise of all liabilities under sections 7652 and 7653 of the Internal Revenue Code, insofar as those sections relate to the commodities subject to tax under Chapters 51, 52, and 53 of the Internal Revenue Code. This authority may be redelegated, but not below the division chief level.

(3) The Assistant Director (Regulatory Enforcement) is authorized to accept or reject offers in compromise submitted pursuant to the provisions of the Federal Alcohol Administration Act (27 U.S.C. 207). This authority may not be redelegated.

Dated: June 22, 1976.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.76-18914 Filed 6-29-76;8:45 am]

Office of the Secretary

DEBT MANAGEMENT ADVISORY COMMITTEES

Meetings and Determination

Notice is hereby given, pursuant to Section 10 of Public Law 92-463, that meetings will be held in Washington on July 27 and 28, 1976, of the following debt management advisory committees:

American Bankers Association Government Borrowing Committee

Securities Industry Association Government Securities and Federal Agencies Committee.

The agenda for the meetings provides for working sessions by the two committees on July 27, a report to the Secretary of the Treasury and Treasury staff by the American Bankers Association Government Borrowing Committee on July 27 and a report to the Secretary of the Treasury and Treasury staff by the Securities Industry Association Government Securities and Federal Agencies Committee on July 28.

Pursuant to the authority placed in Heads of Departments by Section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 190, revised, I hereby determine that these meetings are concerned with information exempt from disclosure under Section 552(b)(4) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees are utilized by this Department at meetings called by representatives of this office. When so utilized they are recognized to be advisory committees under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence in order to avoid adverse effects of premature disclosure on the financial markets and the economy. As such these debt management advisory committee activities concern matters which fall within the exemption covered by Section 552(b)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential".

The Assistant Secretary (Capital Markets and Debt Management) shall be responsible for maintaining records of the meetings of these committees and for providing annual reports setting forth a summary of their activities and such other matters as may be informative to the public consistent with the provisions of 5 U.S.C. 552(b)(4).

Dated: June 25, 1976.

EDWIN H. YEO, III,
Under Secretary for Monetary Affairs.

[FR Doc.76-18952 Filed 6-29-76;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 75-29]

KENNETH G. LAWRENCE

Revocation of Existing Registration

On September 24, 1974, the former Administrator, Drug Enforcement Administration (DEA) issued to Kenneth G. Lawrence, M.D., an Order to Show Cause as to why his registration (AL 5812462) should not be revoked for the reason that he was convicted on December 12, 1973, in the Florence County Court of General Sessions, Twelfth Judicial Circuit of the State of South Carolina, of sixteen felony counts of conspiracy to violate the Controlled Substances Act of South Carolina, and further, that on the same date, the South Carolina Department of Health revoked his license to prescribe, dispense, possess or otherwise handle controlled substances.

On October 25, 1974, through counsel, Dr. Lawrence (Respondent) in effect requested a hearing on the Order to Show Cause with a specific request that such be held in abeyance until then pending charges by the State of South Carolina against Respondent were exhausted. The Administrative Law Judge then presiding granted Respondent's request for continuance on December 24, 1974.

On February 19, 1976, Administrative Law Judge Francis L. Young, presently presiding over the instant matter, issued a pre-hearing ruling setting March 23, 1976 as the date for a hearing in the matter.

On March 10, 1976, through counsel, Respondent again requested a continuance in the instant proceedings. Administrative Law Judge Young on March 19, 1976 denied the request for continuance, after having heard the government on that date oppose the request. On March 23, 1976, a hearing was held in Washington, D.C. before Administrative Law Judge Francis L. Young.

On June 4, 1976, Judge Young certified to the Administrator, pursuant to 21 CFR 1316.65, his recommended findings of fact and conclusion of law, a recommended decision, and the record of the proceedings in this matter. The Administrator, pursuant to 21 CFR 1316.66, hereby publishes his final order in this proceeding based upon the findings of fact and conclusion of law set forth below.

The Administrative Law Judge found, inter alia, that on December 12, 1973, Respondent was convicted, in the Court of General Sessions, State of South Carolina, County of Florence, of sixteen felony counts of conspiracy to violate the controlled substances laws of South Carolina, that on June 20, 1975, Respondent's license to practice medicine in South Carolina was revoked by the State Board of Medical Examiners of South Carolina, and that on July 10, 1975, Respondent's application for controlled substances registration by South Carolina was denied by the South Carolina Department of Health and Environmental Control. Furthermore, Judge Young found that the overt act committed by Respondent in connection with each of the sixteen conspiracy counts consisted of his writing a prescription for a controlled substance in the name of an individual who was not his patient, and that Respondent had the reputation in the community of Florence, South Carolina of prescribing controlled substances outside the course of his professional practice. The Administrator adopts these findings of fact.

The Administrative Law Judge concluded, as a matter of law, that the Administrator of the Drug Enforcement Administration is empowered to revoke Respondent's registration AL5812462 under 21 U.S.C. 824(a)(2) in light of the facts established in the matter. The Administrator adopts this conclusion of law.

The Administrative Law Judge recommended that the Administrator revoke Respondent's DEA Registration AL5812462. The Administrator accepts this recommendation.

Therefore, under the authority vested in the Attorney General by section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823), and redelegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28, Code of Federal Regulations, the Administrator

hereby orders that Registration No. AL5812462, issued to Kenneth G. Lawrence, M.D. as a practitioner under the Controlled Substances Act be, and hereby is, revoked.

Dated: June 23, 1976.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc.76-18932 Filed 6-29-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

COLVILLE INDIANS

Plan for the Distribution of the Colville Portion of the Judgment Funds Awarded in Dockets 161, 222 and 224 Before the Indian Claims Commission

JUNE 21, 1976.

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

The Act of October 19, 1973 (P.L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated by the Act of April 30, 1965, 79 Stat. 81, in satisfaction of the award granted to the Colville Confederated Tribes in Indian Claims Commission Dockets 161, 222 and 224. The plan for the distribution of the funds was submitted to the Congress with a letter dated March 3, 1976, and was received (as recorded in the Congressional Record) by the House of Representatives and by the Senate on March 11, 1976. Neither House of Congress having adopted a resolution disapproving it, the plan became effective on May 21, 1976, as provided by Section 5 of the 1973 Act, supra.

The plan reads as follows:

The Colville Confederated Tribes' portion, as determined by the Court of Claims on April 24, 1974, of the funds appropriated by the Act of April 30, 1965, 79 Stat. 81, in satisfaction of the award granted in Dockets 161, 222 and 224 before the Indian Claims Commission, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

Enrollment. The Colville Confederated Tribes' latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this plan.

Per Capita Distribution. Subsequent to the preparation and approval of this roll, the Secretary shall make a per capita distribution of the totality of the funds, in a sum as equal as possible, to each enrollee.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be placed in individual Indian money (IIM) accounts and handled under 25 CFR 104.5. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D.

Minors' per capita shares in excess of $100, including all investment income accruing thereto, will be retained in individually segregated IIM accounts and shall not be disbursed until the minor attains the age of eighteen years, or the minors' shares, including all investment income, will be placed in a private trust as approved by the Secretary. In those cases where a minor would reach the age of eighteen within six months after establishment of a trust, such funds shall instead be retained in IIM accounts. Upon reaching the age of eighteen, unless under a legal disability, the beneficiary shall be entitled to withdraw the per capita share and accrued investment income thereon as provided in 25 CFR 104.3. If a beneficiary is under a legal disability upon attaining the age of eighteen, the per capita share and accrued investment income thereon shall be handled pursuant to 25 CFR 104.5. If a minor's per capita share is not in excess of one hundred dollars ($100.00), it may be expended for the minor's benefit as provided in 25 CFR 104.4.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.76-18922 Filed 6-29-76;8:45 am]

Geological Survey

MINERAL STUDY OF NEW RIVER GORGE AREA, WEST VIRGINIA

Joint Study

Notice is hereby given that the Bureau of Mines and Geological Survey will jointly conduct a study of the mineral resource potential of about 88,000 acres along a 66-mile segment of the New River in Fayette, Raleigh, and Summers Counties, West Virginia. Known as the New River Gorge, this length of river, stretching from Hinton to Gauley Bridge, was recommended by the Secretary of the Interior for designation as a component of the National Wild and Scenic River System. Among the alternatives being considered are designation as a national park or as a national recreation area.

The study, to be completed in February 1977, will assess the reserves of the eight most significant coalbeds of the more than 30 that crop out in or near the corridor area. Other objectives will be to map the geologic formations and structures in order to assess the potential for petroleum deposits that might underlie the study area and to obtain geochemical samples along the drainage pattern to assess the potential for other mineral deposits. Coal mining in the past has taken place in most of the eight beds at various places along the river and its tributaries. The feasibility of deep mining of the coal from access points outside the corridor will be determined.

The purpose of this notice is to inform the public of the study and to solicit information from those who might have knowledge of potentially significant mineral occurrences in the study area. The extent of past mining in the area will largely be determined from maps in the Bureau of Mines Mine Map Repository, but it would be particularly valuable if persons having old mine maps would make them available for the study. Contacts should be made either with Robert D. Thomson, Bureau of Mines Eastern Field Operation Center, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213, or Frank G. Lesure, Geological Survey National Center, Reston, Virginia 22092.

WILLIAM L. FISHER,
Assistant Secretary of the Interior.

JUNE 24, 1976.

[FR Doc.76-18963 Filed 6-29-76;8:45 am]

Office of Hearings and Appeals

[Docket No. M 76-168]

ART COAL CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provision of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S. § 861(c) (1970), Art Coal Company, Incorporated has filed a petition to modify the application of 30 CFR 75.1710 to its No. 30 Mine, Pike County, Kentucky.

30 CFR § 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

To be read in conjunction with Section 75.1710 is 30 CFR 75.1710-1 which in pertinent part provides:

* * * Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) On and after January 1, 1976, in coal mines having mining heights of 24 inches or more, but less than 36 inches; and

(6) On and after July 1, 1976, in coal mines having mining heights of less than 24 inches.

* * *

The substance of Petitioner's statement is as follows:

1. The equipment used in the subject mine consists of: 1 Epling Loading Machine, 3 Mesher Tractors, 1 Acme Bolting and Butting Machine.

2. This equipment operates in a coal seam having a range in height from 34 inches to 40 inches. The bottom and top are not uniform.

3. The maximum height of the canopies whch Petitioner can install on the equipment is 30 inches. At that height, the equipment hits the roof and obstructs the vision of the michine operator.

4. Petitioiner's employees have refused to operate machines equipped with canopies for the reasons described above.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 30, 1976. 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.

Dated: June 23, 1976.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

[FR Doc. 76-18936 Filed 6-29-76; 8:45 am]

Bureau of Mines

MINERAL STUDY OF NEW RIVER GORGE AREA, WEST VIRGINIA

Joint Study

CROSS REFERENCE: For a document issued jointly by the Bureau of Mines, Department of the Interior and Geological Survey, Department of the Interior, see FR Doc. 76-18963 appearing elsewhere in this issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

ILLINOIS GRAIN INSPECTION POINT

Change in Name

Notice is hereby given that the Robert R. Beals, Grain Inspection, which is designated under section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)) to operate as an official inspection agency at Paris, Illinois, has changed its name to Paris Illinois Grain Inspection. The change in name does not involve a change in management or ownership.

Done in Washington, D.C., on June 24, 1976.

WILLIAM T. MANLEY,
Acting Administrator.

[FR Doc.76-18971 Filed 6-29-76;8:45 am]

Forest Service

DESCHUTES NATIONAL FOREST MULTIPLE USE ADVISORY COMMITTEE

Two-Year Renewal

The Assistant Secretary for Conservation, Research, and Education has renewed the Deschutes National Forest Multiple Use Advisory Committee for an additional 2-year period ending June 30, 1978.

This is a local Forest Service advisory committee established by the Chief of the Forest Service on July 1, 1970, to consider and advise the Forest Supervisor on policies, programs, and planning affecting the administration of Forest Service activities in the Deschutes National Forest, Oregon.

The Assistant Secretary has determined that continuation of this committee is necessary and in the public interest in connection with the duties imposed on the Department by law.

J. W. DEINEMA,
Deputy Chief.

JUNE 23, 1976.

[FR Doc.76-18919 Filed 6-29-76;8:45 am]

FOREST RESEARCH ADVISORY COMMITTEE, ORONO, MAINE

Two-Year Renewal

The Assistant Secretary for Conservation, Research, and Education has renewed the Forest Research Advisory Committee, Orono, Maine, for an additional 2-year period ending July 1, 1978.

This is a local advisory committee established by the Forest Service on July 2, 1948, to advise the Director of the Northeastern Forest Experiment Station on the definition and selection of problems assigned to the Silviculture Research Project at Orono, Maine, and on coordination of this project with other research.

The Assistant Secretary has determined that continuation of this committee is necessary and in the Public interest in connection with the duties imposed on the Department by law.

J. W. DEINEMA,
Deputy Chief.

JUNE 23, 1976.

[FR Doc.76-18905 Filed 6-29-76;8:45 am]

DEPARTMENT OF COMMERCE

Bureau of the Census

STATUS, CHARTBOOK OF SOCIAL AND ECONOMIC TRENDS

New Monthly Publication

Notice is hereby given that the Bureau of the Census will issue a new monthly publication, "STATUS, Chartbook of Social and Economic Trends." The chartbook is a graphic presentation of current statistical information on major social and economic conditions and trends within the United States. Many Government agencies contribute to this publication. Highlighting each edition will be a monthly feature in which a subject of major public interest will be covered in depth. The first three issues available in July, August, and September will be sold only as single issues. The price is $3.60 for each issue. These issues can be ordered from Subscriber Services, Administrative Services Division, Bureau of the Census, Washington, D.C. 20233. Subscription sales will begin in October 1976. Information about subscription sales can be obtained by writing to Subscriber Services, address above.

VINCENT P. BARABBA,
Director, Bureau of the Census.

[FR Doc.76-18969 Filed 6-29-76;8:45 am]

Office of the Secretary

PROPOSED VOLUNTARY CONSUMER PRODUCT INFORMATION LABELING PROGRAM

Extension of Time for Filing Comments

In a notice published in the FEDERAL REGISTER on May 25, 1976 (41 FR 21389-21394) the Department of Commerce announced its intention to develop in cooperation with consumers, manufacturers, producers, distributors, retailers and other interested groups, a voluntary consumer product information labeling program provided that substantial need and support for such a program was demonstrated by interested members of the public. The time period for the submission of comments on the proposed program as set out in that notice was July 9, 1976.

Following publication of that notice, the Department of Commerce has received several requests for an extension of time in which to submit comments. It appears that these requests for extension of time are justified because of the technical complexity of the proposed program.

Accordingly, in light of those requests for additional time to consider and prepare a meaningful response to the Department's proposed program for voluntary consumer product information labeling, the period of time for filing written comments is hereby extended to August 2, 1976. All comments should be submitted in four copies to the Assistant Secretary for Science and Technology, Room 3862, U.S. Department of Commerce, Washington, D.C. 20230.

Issued: June 25, 1976.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.76-18933 Filed 6-29-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

EXECUTIVE COMMITTEE OF THE NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that the Executive Committee of the National Advisory Council on Adult Education will meet on July 26, 1976, from 9:30 a.m. to 4:30 p.m., Office of the National Advisory Council on Adult Education, Room 323, Pennsylvania Bldg., 425 13th Street, N.W., Washington, D.C.

The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act

(80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee shall be open to the public, however, because of limited space in the Council offices, interested persons wanting to attend must contact, in writing, the Executive Director. The proposed agenda includes:

1977 NACAE Priorities
August Meeting Agenda
Transition Quarter Budget
FY-77 Operational Budget
Orientation Procedures.

Records shall be kept of the Committee proceedings (and shall be available for public inspection at the Office of the National Advisory Council on Adult Education located in Room 323, Pennsylvania Bldg., 425 13th Street, NW., Washington, D.C. 20004).

Signed at Washington, D.C., on June 24, 1976.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc.76-18944 Filed 6-29-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-76-439]

ASSISTANT SECRETARY FOR ADMINISTRATION, ET AL.

Delegation of Authority

The Small Business Emergency Relief Act, Public Law 94-190 (42 U.S.C. 252), has conferred upon the Secretary of Housing and Urban Development the authority to grant relief to small business concerns with fixed-price HUD contracts in cases where such concerns have suffered or can be expected to suffer serious financial loss. Such loss must be the result of significant and unavoidable difficulties during performance, either because of the energy crisis, or rapid and unexpected escalations of contract costs. The purpose of this delegation of authority is to carry out the requirements of Section 5 of P.L. 94-190.

SECTION A. *Authority delegated.* The Assistant Secretary for Administration is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the provisions of P.L. 94-190 and all matters arising thereunder, including on a non-exclusive basis, the following:

1. Receiving and reviewing applications for relief from small business concerns with HUD fixed-price contracts.

2. Making determinations whether or not to grant relief pursuant to Subsections 4 (a), (b) and (c) of P.L. 94-190.

SECTION B. *Authority excepted.* The authority delegated under section A is not applicable to the HUD property disposition programs.

SECTION C. *Redelegation of authority.* The Assistant Secretary for Administration is authorized to redelegate to employees of the Department any of the authority delegated under section A.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Effective date: This delegation of authority shall be effective July 2, 1976.

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.76-18995 Filed 6-29-76;8:45 am]

[Docket No. D-76-440]

Office of Assistant Secretary for Housing

PROPERTY DISPOSITION COMMITTEES

Redelegation of Authority

The redelegation of authority and assignment of functions with respect to the Property Disposition Committee, published at 35 F.R. 4022, and amended at 35 F.R. 16102 and 36 F.R. 14229, is revised to read as follows:

SECTION A. *Central Office Property Disposition Committee Members.*

The Central Office Property Disposition Committee (herein called the Central Office Committee) is comprised of the following members: Deputy Assistant Secretary, Office of Housing, Chairman; Director, Office of Property Disposition, Office of Housing; Director, Office of Housing Programs, Office of Housing; Director, Office of Loan Management, Office of Housing; General Counsel or his designee; the Assistant Commissioner for Technical and Credit Standards, Office of Housing; and such other members as the Assistant Secretary for Housing (herein called the Assistant Secretary) shall designate.

SEC. B. *Redelegation of authority to the Central Office Committee.*

The Property Disposition Committee is redelegated the following authority:

1. To pass upon and determine the action to be taken with respect to the program for disposition of any property acquired by the Secretary in connection with multifamily housing under any title of the National Housing Act (12 U.S.C. 1701, et seq.), college housing under title IV of the Housing Act of 1950 (12 U.S.C. 1749-1749c), housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

2. To determine whether an expenditure in connection with any multi-family housing project is "necessary to carry out the provisions" of titles I, II, VI, VII, VIII, IX, X, and XI of the National Housing Act as such term is used in section 1 of the Act (12 U.S.C. 1702), and to approve such expenditure for and on behalf of the Assistant Secretary whenever such a determination and approval is necessary to support the legal authority of the Assistant Secretary to make such expenditure.

SEC. C. *Redelegation of authority to the Regional Office Property Disposition Committee.*

1. There is hereby established in each Regional Office a Regional Office Property Disposition Committee (herein called the Regional Office Committee) which shall be comprised of the following members: Regional Administrator, Chairman; Assistant Regional Administrator for Fair Housing and Equal Opportunity; Assistant Regional Administrator for Administration; Assistant Regional Administrator for Housing Production and Mortgage Credit; Assistant Regional Administrator for Community Planning and Development; Regional Counsel; and such other members as the Regional Administrator shall designate. The Assistant Regional Administrator for Housing Management shall serve the Committee in an advisory capacity: *Provided, That* in the event of a tie vote, he shall be entitled to vote.

2. The Regional Committee in each HUD Regional Office is redelegated the authority to pass upon and determine the action to be taken with respect to the disposition program for public offering by competitive bids of any property acquired by the Secretary, located within their respective jurisdictions, in connection with multifamily housing under any title of the National Housing Act (12 U.S.C. 1701, et seq.), college housing under title IV of the Housing Act of 1950 (12 U.S.C. 1749-1749c), housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and non-residential property under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b). The disposition programs for such properties shall include the terms of sale, manner of financing, and, where appropriate, the terms, amounts, interest rate, and amortization plans of mortgages taken as security, and any special provisions in connection with the sale of such properties, together with a statement of the Finding of the Environmental Clearance required under HUD Handbook 1390.1. The disposition program shall also include the carrying out of appropriate advertisement for each public offering: *Provided, That* in all cases where the minimum acceptable sales price is determined to be in excess of $300,000, the program of advertisement shall be carried out by the Office of Property Disposition, Office of Housing.

SEC. D. *Redelegation of authority to the Area Office Property Disposition Committee and to the Insuring Office Property Disposition Committee.*

1. Each Regional Administrator and each Deputy Regional Administrator is

authorized to establish in any Area Office an Area Office Property Disposition Committee (herein called the Area Office Committee) and to redelegate to such committee the power and authority of the Regional Office Committee within the jurisdiction of the Area Office. The Area Office Committee shall consist of the following members: Area Director, Chairman; Deputy Area Director; Director, Housing Management Division, Director, Housing Production and Mortgage Credit Division or Chief Underwriter; Director, Community Planning and Development; Director, Fair Housing and Equal Opportunity; Area Counsel; and such other members as the Area Office Director shall designate. The Chief, Property Disposition Branch, shall serve the Committee in an advisory capacity and, except in the event of a tie vote, shall be a non-voting member.

2. Each Regional Administrator and each Deputy Regional Administrator is authorized to establish in any Insuring Office an Insuring Office Property Disposition Committee (hereafter called the Insuring Office Committee) and to redelegate to such committee the power and authority of the Regional Office Committee within the jurisdiction of the Insuring Office. The Insuring Office Committee shall consist of the following members: Insuring Office Director, Chairman; Deputy Director; Director, Housing Management Division; Chief Underwriter; Specialist, Fair Housing and Equal Opportunity; Specialist, Community Planning and Development or Environmental Control Officer; and such other members as the Insuring Office Director shall designate. The Chief, Property Disposition Branch, shall serve the Committee in an advisory capacity and, except in the event of a tie vote, shall be a non-voting member.

SEC. E. *Procedures.*

The following procedures shall apply to the Central Office Committee and to each Regional Office, Area Office and Insuring Office Committee (herein called the Committee):

1. The Committee shall meet at the call of the Chairman or Acting Chairman. Any Committee action must be taken at a meeting of the Committee and must be approved by a majority vote of all members of the Committee, whether present or not. The Committee shall maintain written minutes of each meeting. Such minutes shall be dated, consecutively numbered, and shall be signed by each member attending the meeting, indicating either an affirmative or negative vote. Copies of all executed minutes together with a copy of each approved disposition program shall be submitted to the Director, Office of Property Disposition, Office of Housing, within three working days following the meeting of the Committee, and to the Regional Administrator for disposition programs approved by other than the Regional Office Committee.

2. The minutes of the meeting and disposition program approved by the Committee shall constitute the basis of the public offering and acceptance or rejection of bids and the execution of all documents and instruments relating and incident thereto, including instruments of conveyance.

3. In order to carry out the functions of the Committee, the Chairman is authorized to execute any deed, deed of release, assignment and satisfaction of mortgage, contract to purchase (installment of purchase), offer acceptance, or other form of contract of sale, or other instrument relating to such properties or any interest therein acquired by the Secretary.

4. Any employee who has been formally designated to serve in an acting capacity for a member of the Committee in connection with his Departmental duties shall serve as a member of the Committee in the absence of such member.

SEC. F. *Exercise of redelegated authority.* Redelegations of authority made under sections A through E shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator, Area Director, or Insuring Office Director, or any of them, to whom a delegate is responsible.

(Secretary's delegation of authority to redelegate published at 36 FR 5005, March 16, 1971)

Effective date: This redelegation of authority is effective July 2, 1976.

JAMES L. YOUNG,
Assistant Secretary
For Housing.

[FR Doc.76-18994 Filed 6-29-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 76-6-162]

PAN AMERICAN WORLD AIRWAYS, INC.

Order Affirming Staff Action

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of June, 1976.

On April 9, 1976 the Board's Tariffs Section rejected tariff revisions proposed by Pan American World Airways, Inc. (Pan American) to introduce 120-day excursion fares and individual-return group inclusive tour fares through September 30, 1976 from Taipei/Hong Hong/Bangkok to the United States.[1] The fares were filed to meet alleged illegal competition. Pan American has now filed a petition for review of this staff action, urging that the Board permit it to file the rejected tariff.

In support of its petition, Pan American alleges that the staff apparently interpreted the Board's regulations with respect to meeting competition as applying only when the fares matched are lawfully filed in the competitor's tariff, which has the result of sheltering illegal fares from competition until the Board's Bureau of Enforcement (BOE) can complete formal enforcement proceedings; that sale of the alleged illegal fares from the Far East to the U.S. is continuing, and will continue to divert significant traffic from Pan American unless the Board permits its proposed tariff to become effective. The carrier further alleges that the promotion of nontariff fares by many carriers in the Far East-U.S. market was first brought to the Board's attention in June 1975 when Pan American filed a well-documented enforcement complaint (Docket 27963); that if Pan American's previous experience with enforcement proceedings is any guide, final action on its complaint is still many months away, and competing carriers should not be expected to sustain massive revenue losses while the protracted enforcement process moves slowly towards completion. Finally, it is contended that the recent inquiry by the Federal grand jury in San Francisco was limited to illegal practices in connection with U.S.-originating transportation; and that in 1975 the Board permitted Pan American to compete with nontariff fares being charged for U.S.-originating travel to Tokyo, Taipei, Hong Kong and Bangkok.

Upon full consideration of all relevant factors, the Board has decided to deny Pan American's petition, and to affirm the staff's action rejecting Pan American's tariffs. The Board recently rejected a similar filing by Pan American to match alleged illegal competition by Air Panama.[2] In taking that action the Board stated that, while its Economic Regulations permit filings to meet competition, they also specifically require such filings to be identical or substantially similar to fares in lawful tariffs on file with the Board. There is nothing to suggest that the issue is significantly different in the present case. As stated in that order, such matters are essentially an enforcement problem not only because of the illegality of the alleged practices, but also because it is impossible without enforcement action to verify the alleged non-tariff fares Pan American seeks to match. Moreover, the pattern in the transpacific market during the present open rate period has been that when a new, reduced fare is filed to reflect the existing level of discounting, that fare merely becomes the new base level for further discounting, resulting in a continuing downward spiral. Nevertheless, we are unable to agree that these circumstances justify meeting illegal fares by an allegedly matching tariff filing which in our opinion is self-defeating and will not solve the problem. The Board is referring this matter to the Bureau of Enforcement for appropriate action.[3]

Accordingly, *it is ordered* that: The action taken under delegated authority in Rejection Notice No. B-3408 be and hereby is affirmed.

[1] Rejection Notice No. B-3408, April 9, 1976.

[2] Order 76-2-103, February 26, 1976.

[3] We note that all of the scheduled carriers complained against by Pan American in its June Complaint are members of IATA and therefore subject to IATA enforcement activity.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-18960 Filed 6-29-76;8:45 am]

[Docket No. 29296, Order 76-6-167]

SEABOARD WORLD AIRLINES, INC.

Request To Engage in Discussions Relating to U.S.-Germany Cargo Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of June, 1976.

By Order 76-6-54, June 9, 1976, the Board granted the request of Seaboard World Airlines, Inc. for permission to engage in discussions with Pan American World Airways, Inc. and Deutsche Lufthansa Aktiengesellschaft, on various interrelated matters involving cargo air transportation between the United States and the Federal Republic of Germany.[1]

Trans World Airlines, Inc. (TWA) in a June 9, 1976 motion to file a late-filed document, requests that it be permitted to participate in such discussions. In support of its request, TWA states that although it has suspended scheduled service between the United States and Germany, it continues to operate on-route charters to Frankfurt consistent with its section 401 Certificate, and additionally serves a number of countries neighboring Germany; thus any agreement reached by the three carriers serving Germany may affect TWA's financial interests, and TWA should therefore be permitted to participate in the discussions.

The Board will herein grant TWA's request.

Accordingly, *it is ordered*, That:

1. Trans World Airlines, Inc. is hereby authorized to participate in the intercarrier discussions authorized by Order 76-6-54; and

2. The Motion of Trans World Airlines, Inc. to file an otherwise unauthorized document in Docket 29296 be and hereby is granted.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-18961 Filed 6-29-76;8:45 am]

[Order 76-6-161; Docket No. 24233, etc.]

TEXAS INTERNATIONAL AIRLINES, INC., ET AL.

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of June 1976.

Application of Texas International Airlines, Inc., for amendment of its certificate of public convenience and necessity for Route 82 and to add a new segment authorizing service between the terminal point Midland/Odessa, Texas, the intermediate point Albuquerque, New Mexico, and the terminal point Las Vegas, Nevada, Docket No. 24233; application of Texas International Airlines, Inc., for amendment of its certificate of public convenience and necessity for Route 82 so as to add a segment between the coterminal points Houston, Dallas/Fort Worth, Austin, and San Antonio Texas, and the terminal point Las Vegas, Nevada, Docket No. 29158; application of American Airlines, Inc. under section 401 of the Federal Aviation Act of 1958, as amended, Docket No. 24228; application of Braniff Airways, Inc. for amendment of its certificate of public convenience and necessity for Route 9, Docket No. 29076; application of Continental Air Lines, Inc. for amendment of its certificate of public convenience and necessity for Route 29, Docket No. 25945; application of Western Air Lines, Inc. for amendment of its certificate of public convenience and necessity for Route 63 to add the new segments Las Vegas-Dallas/Fort Worth and Las Vegas-Houston, Docket No. 29196; petition for Las Vegas-Texas Service Investigation, Docket No. 29112; Las Vegas-Dallas/Fort Worth Nonstop Service Investigation, Docket No. 29445.

Pending before the Board are applications for improved authority between Las Vegas, on the one hand, and/or Albuquerque and points in Texas, on the other hand, filed by American Airlines, Inc. (Docket 24228), Braniff Airways, Inc. (Docket 29076), Continental Air Lines, Inc. (Docket 25945), Western Air Lines, Inc. (Docket 29196), and Texas International Airlines, Inc. (Dockets 24233 and 29153).[1] By motion filed on November 20, 1975, TXI seeks expedited consideration of its application which requests a new segment authorizing nonstop service between Las Vegas and Albuquerque (Docket 24233).[2] The Las Vegas Parties[3] filed a motion for expedited consideration of the applications of TXI, American, Braniff, and Continental mentioned above.[4] Senator Howard W. Cannon filed a petition on April 8, 1976, for an investigation of Las Vegas-Texas service (Docket 29112) supporting expedited consideration of the markets Las Vegas discussed in its motion.

In support of its motion TXI alleges, *inter alia*, that the Board found a need for competitive service in the Las Vegas-Albuquerque market in the *Service to Albuquerque Case*[5] and authorized Frontier Airlines, Inc. (Frontier) to compete with Trans World Airlines, Inc. (TWA); that Frontier proposed a service pattern of four daily one-way trips in addition to the anticipated five daily trips by TWA but since January 1971 and through March 1975 the market has received an average of only 5.6 trips daily; that Frontier conceded in the *American-Frontier Route Exchange Agreement* case[6] that the Las Vegas-Albquerque segment suffered because of its poor fit with Frontier's route system, and Frontier presently offers two daily one-way trips four days a week in the market; that grant of TXI's application will enable the Las Vegas-Albuquerque market to finally experience the competitive service anticipated in the *Service to Albuquerque Case;*[7] that TXI will offer first single-plane service and single-carrier service to markets generating 22,000 and 40,000 passengers, respectively, in 1974; that $344,000 in fare reductions will result from TXI's proposed single-carrier service because of joint-fare construction rules under DPFI; that TXI's Subpart K subsidy need will be reduced as a result of projected profits; and that there will be no significant diversion from any carrier.

Several answers to TXI's motion were filed by carriers and civic interests. Frontier and TWA opposed TXI's motion.[8] Hughes Air Corp., d/b/a Hughes Airwest (Airwest) objects to TXI's motion and requests that the assignment of applications for hearing with respect to Las Vegas-Texas authority be deferred until after decision on the pending petition for reconsideration in the *American-Airwest Route Exchange Agreement*[9] or, in the alternative, that any hearing involving the Las Vegas-Albuquerque-Texas service include Airwest's application for Las Vegas-Albuquerque-Dallas/Fort Worth service in Docket 24327 as well as the issue of service from Las Vegas to El Paso, San Antonio, and Houston. Western Air Lines, Inc. (Western) supports TXI's motion under two conditions: First, that Frontier shows no interest in adequately servicing the Las Vegas-Albuquerque market; and secondly, that Western's application in

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[1] These subjects include substitute service via surface transport, carriage of Germany-U.S. freight by charters, U.S./Germany cargo rate levels and their relationships to rates in neighboring markets, interline arrangements, and airport cargo facilities.

[1] American applied for Las Vegas-Dallas/Fort Worth and Las Vegas-El Paso-San Antonio-Houston authority. Braniff applied for Las Vegas-Dallas/Fort Worth authority. Continental applied for authority to serve the Houston-Las Vegas market, including the intermediate points San Antonio and El Paso.

[2] TXI filed an environmental evaluation pursuant to sec. 312.12 of the Board's Procedural Regulations on November 20, 1975.

[3] Those parties are: Clark County, Nevada, the Greater Las Vegas Chamber of Commerce, the City of Las Vegas, the Nevada Resort Association, and the Las Vegas Convention/Visitors Authority.

[4] Las Vegas' motion also embraced an application filed by Braniff Airways in Docket 24224 which was dismissed as stale by Order 76-3-122. Braniff then refiled for the same authority in Docket 29076, March 31, 1976.

[5] Order 69-7-136, July 24, 1969.

[6] Order 75-8-94, August 18, 1975.

[7] In the primary market TXI proposes to operate two nonstop round trips daily which would extend beyond Albuquerque to Austin, Dallas/Fort Worth, Houston, and Midland/Odessa.

[8] Frontier filed an addendum to its answers on March 19, 1976, stating its intention to operate one daily one-stop flight via El Paso in the Las Vegas-Albuquerque market to begin October 1976.

[9] Order 75-8-93, August 18, 1975.

Docket 25582 for nonstop authority in the Las Vegas-Albuquerque market be consolidated with TXI's application. Finally, American seeks to put in issue competitive nonstop authority in the Las Vegas-Dallas/Fort Worth market if TXI's application is set for hearing.[10]

In support of its motion, the Las Vegas parties allege, *inter alia*, that Las Vegas has no single-plane service to Austin, El Paso, Midland/Odessa, and San Antonio and has a substantial need for competitive nonstop service in the Dallas/Fort Worth and Houston markets. American filed an answer in support of Las Vegas' motion.

The civic interests which filed answers in support of TXI's motion were Austin, Midland/Odessa, and Las Vegas.

American also filed, on January 16, 1976, an application in Docket 24228 as amended, seeking authority between Las Vegas-Dallas/Fort Worth and Las Vegas-El Paso-San Antonio-Houston. Contemporaneously, it filed a motion to consolidate its amended Las Vegas-Texas application with TXI's application in Docket 24233.[11] Delta, Frontier, National, and TXI filed motions in opposition to American's motion to consolidate.[12] The El Paso Civic Interests and Las Vegas Parties filed answers in support of American's motion to consolidate.[13]

Senator Howard W. Cannon, on April 8, 1976, filed a petition for an investigation of Las Vegas-Texas service (Docket 29112) supporting expedited consideration of the markets Las Vegas discussed in its motion. American and TXI filed answers in support of Senator Cannon's petition, and Delta filed an answer opposing the petition insofar as it concerns the Dallas/Fort Worth-Las Vegas market.[14] Braniff filed a reply to the answers of TXI and American and indicated its support of Senator Cannon's petition.[15]

Upon consideration of the pleadings and all the relevant facts we have decided to institute an investigation to consider the need for competitive nonstop authority in the Las Vegas-Dallas/Fort Worth market and to deny the requests for expedited consideration of all other Las Vegas markets embraced by the subject motions.

The Las Vegas-Dallas/Fort Worth market is among the largest markets in the country not receiving competitive nonstop service. The market generated 167,300 local O&D and interline connecting passengers in 1974. Delta is the only carrier currently authorized to provide nonstop service in the market.

The Las Vegas-San Antonio/Midland/Odessa/Austin/El Paso markets are the only markets not receiving single-plane service. However, these markets are extremely small ranging from a low of about 5300 local O&D and interline connecting passengers in 1974 (or only 7 passengers a day in each direction) in the Las Vegas-Austin and Las Vegas-Midland/Odessa markets to a high of only 12,390 local O&D and interline connecting passengers in 1974 (or only 17 passengers a day in each direction) in the Las Vegas-San Antonio market.[16] The numerous connecting services available in these markets are more than sufficient to accommodate the limited traffic demand.

The two remaining markets are Las Vegas-Albuquerque and Las Vegas-Houston. Las Vegas-Albuquerque generated only 67,000 local O&D and interline connecting passengers in 1974, yet receives nonstop service by two carriers, TWA and Frontier. Frontier indicated in an addendum to its answers filed on March 19, 1976, that it will institute a daily nonstop round trip with B–737–200 aircraft in the Las Vegas-Albuquerque market in October 1976. While it may be argued that TXI might be a more effective competitor than Frontier in this market, we cannot find that the level of service when related to the amount of traffic generated warrants according the service needs of this market priority hearing consideration.

The Las Vegas-Houston market generated only 54,260 local O&D and interline connecting passengers in 1974 (or only about 75 a day in each direction). This market currently receives two and one-half daily non-stop round trips by National Airlines as well as numerous connecting services throughout the day. This relatively small, but well-served market does not warrant priority hearing treatment at this time.

With respect to TXI's request for a pretrial restriction, the Board does not believe that it is desirable to establish any pretrial restrictions but will permit the carriers to present evidence at the hearing in support of any such restrictions.

Finally, American, Braniff, TXI, and Western have not submitted sufficient information for us to determine the environmental consequences of their requested certificate amendments at this time. Therefore, we will require American, Braniff, TXI, and Western to file the information set forth in Part 312 of the Board's Procedural Regulations. We will allow these carriers and all other carriers filing applications in the proceeding 30 days from the date of service of this order to file their environmental evaluations.

Accordingly, *it is ordered*, that:

1. An investigation of the need for competitive nonstop authority in the Las Vegas-Dallas/Fort Worth market to be known as the *Las Vegas-Dallas/Fort Worth Nonstop Service Investigation*, Docket 29445 be and it hereby is instituted and shall be set down for hearing before an Administrative Law Judge of the Board at a time and place hereinafter designated, as the orderly administration of the Board's docket permits;

2. The investigation instituted by paragraph 1, above, shall include consideration of the following issues:

(a) Do the public convenience and necessity require the certification of an air carrier or air carriers on a subsidy-ineligible basis to engage in nonstop air transportation between Las Vegas, Nevada, on the one hand, and Dallas/Fort Worth, Texas, on the other?

(b) If the answer to (a) is in the affirmative, which air carrier(s) should be authorized to engage in such service? and

(c) What conditions, if any, should be placed on the operation of such carrier(s)?

3. The motion of Texas International Airlines, Inc., in Docket 24233 be and it hereby is denied;

4. The motion of the Las Vegas parties (Docket 25945) to the extent not granted be and it hereby is denied;

5. Frontier Air Lines' motion for leave to file an otherwise unauthorized document be and it hereby is granted;

6. Braniff Airways' motion for leave to file an otherwise unauthorized document be and it hereby is granted;

7. Delta Air Lines' motion for leave to file a reply in Docket 24233 be and it hereby is granted;

8. American Airlines' motion to consolidate its amended application in Docket 24228 be and it hereby is dismissed;

9. The applications of American Airlines (Docket 24228), Braniff Airways (Docket 29076), Continental Air Lines (Docket 25945), and Texas International Airlines (Dockets 23233 and 29158), and the petition of Senator Howard W. Cannon (Docket 29112) to the extent they conform with the issues in the proceeding instituted in paragraph 1, above, be and they hereby are consolidated in the *Las Vegas-Dallas/Fort Worth Nonstop Service Investigation*, Docket 29445;

10. American Airlines, Braniff Airways, Continental Air Lines, Texas International Airlines, Western Air Lines, the cities of Dallas, Fort Worth, and Las Vegas, and Senator Howard W. Cannon be and they hereby are made parties to the proceeding instituted in paragraph 1, above;

11. American Airlines, Braniff Airways, Continental Air Lines, Texas International Airlines, and Western Air

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[10] Delta filed a reply to American's answer urging the Board to reject American's answer as beyond the scope of the issues in TXI's application. Delta's reply was accompanied by a motion for leave to file an unauthorized document. We will grant Delta's motion.

[11] Because of our decision to deny TXI's subject motion, American's motion for consolidation will be dismissed as moot.

[12] Delta's and TXI's answers were both filed on January 27, 1976, Frontier's answer on February 3, 1976, and National's answer on February 2, 1976.

[13] El Paso and Las Vegas parties filed answers on February 3, 1976.

[14] TXI suggests a pretrial condition which would preclude new single-plane service authority except between Las Vegas and Texas and states which are contiguous to either Nevada or Texas.

[15] Braniff's motion for leave to file an otherwise unauthorized document will be granted.

[16] The Las Vegas-El Paso market generated only about 10,000 local O&D and interline connecting passengers in 1974 or only about 14 passengers a day in each direction. In Frontier's addendum to its answers filed on March 19, 1976, Frontier states that it will institute one daily one-stop flight in this market in its October 1976 schedules.

Lines, and all other carriers filing applications in the proceeding instituted in paragraph 1, above, shall file environmental evaluations pursuant to section 312 of the Board's Procedural Regulations, 14 C.F.R. section 312.12 (1975), within 30 days of the service date of this order;

12. This order shall be served on American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Frontier Airlines, Inc., Hughes Airwest, Texas International Airlines, Inc., Trans World Airlines, Inc., Western Air Lines, Inc., the City and Chamber of Commerce of Austin, Texas, the cities of Dallas and Fort Worth, Texas, the Las Vegas Parties, the Cities and Chambers of Commerce of Midland and Odessa, Texas, and Senator Howard W. Cannon; and

13. Applications, motions to consolidate, and petitions for reconsideration of this order shall be filed within thirty days from the service date of this order and answers thereto shall be filed within fifteen days thereafter.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[1]

PHYLLIS T. KAYLOR,
Acting Secretary.

[FR Doc.76-18959 Filed 6-29-76;8:45 am]

COMMISSION ON CIVIL RIGHTS

PRIVACY ACT OF 1974

Amendment to Systems of Records

Notice is hereby given of an additional routine use for CRC-001, Appeals, Grievances and Complaints (Staff); CRC-002, Applications for Employment; CRC-003, Complaints; CRC-004, Commission Projects; CRC-005, Information on Commissioners, Staff and State Advisory Committee Members, past and present; CRC-006, Other Employee Programs: Equal Employment Opportunity—Troubled Employee and Upward Mobility; CRC-007, Personnel Records; CRC-008, Resource and Consultant; CRC-009; State Advisory Committee Project files and CRC-010, Travel, Payroll, Time and Attendance of Commissioners, staff, consultants and State Advisory Committee members.

This routine use was inadvertently omitted when the systems notices were originally published in the FEDERAL REGISTER 40 FR 40786 through 40791 (Sept. 3, 1975).

Pursuant to 5 U.S.C. 552a(e)(11) interested persons are invited to submit written comments on this routine use to the Office of General Counsel, U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C. 20425. All comments must be received on or before July 30, 1976. Comments will be available for public inspection in Room 600, 1121 Vermont Avenue, from 8:45 a.m. to 5:30 p.m.

In consideration of the foregoing, notice is hereby given of the addition of the following routine use to the 10 Systems of Records of the U.S. Commission on Civil Rights listed above as follows:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

JOHN A. BUGGS,
Staff Director.

JUNE 23, 1976.

[FR Doc.76-18935 Filed 6-29-76;8:45 am]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1976

Notice of Proposed Additions

Notice is hereby given pursuant to section 2(a)(2) of Pub. L. 92-28; 85 Stat. 77, of the proposed additions of the following commodities to Procurement List 1976, November 25, 1975 (40 FR 54742).

Class 7510

Binder, Awards Certificate
7510-00-115-3250 (requirements for GSA Regions 6, 7 & 8 only.)
Refill, List Finder
7510-00-285-2800
7510-00-530-7191

Comments and views regarding these proposed additions may be filed with the Committee not later than July 30, 1976. Communications should be addressed to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Suite 610, Arlington, Virginia 22201.

This notice is automatically cancelled six months after the date of this FEDERAL REGISTER.

By the Committee.

W. W. FLETCHER,
Executive Director.

[FR Doc.76-18926 Filed 6-29-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 563-6; OPP-210005]

STATE-FEDERAL FIFRA IMPLEMENTATION ADVISORY COMMITTEE

Request for Comments on Recommendations

On March 10-11, 1976, the State/Federal FIFRA Implementation Advisory Committee (SFFIAC) held its fourth meeting at the Environmental Protection Agency (EPA) Headquarters in Washington DC. The SFFIAC is established in accordance with the provisions of the Federal Advisory Committee Act (86 Stat. 770), and its function is to review proposed pesticide plans, strategies, policies, and regulations and to evaluate them from the standpoint of State regulatory programs. The results of such evaluation are furnished to EPA in the form of advice, information, and recommendations.

At the March meeting, the Working Group on Registration and Classification of the SFFIAC presented some general and specific recommendations to the Committee concerning EPA regulations under section 3 (40 CFR 162) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These regulations are entitled "Registration, Reregistration and Classification Procedures" and were published as final rules last July 3 (40 FR 28241). The recommendations arose out of a meeting of the Working Group which was held on February 9-10, 1976 in Sacramento CA. These recommendations were amended and then approved by the whole Committee at its March meeting.

In line with EPA's commitment to both an open exchange of ideas regarding the Agency's policies and programs and to the encouragement of a continuing dialogue between EPA and the public to the greatest extent possible, EPA has decided to publish these recommendations and to solicit comment on them. Extra copies of the SFFIAC recommendations and the section 3 regulations are available from the office of the Federal Register Section (202/755-4854) at the address below.

PUBLIC COMMENT

Interested persons are invited to submit written comments with reference to this notice to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, East Tower, 401 M St. SW, Washington DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting them. The comments must be received on or before August 30, 1976 and should bear the identifying notation [OPP-210005]. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 21, 1976.

AUTHORITY: Sec. 21 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136 et seq.).

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

RECOMMENDATIONS FOR CHANGES IN "REGISTRATION AND CLASSIFICATION PROCEDURES"

BY STATE-FEDERAL FIFRA IMPLEMENTATION ADVISORY COMMITTEE

The Working Group on Registration and Classification (WG/RC), at its February 9-10 meeting in Sacramento, California, discussed the current status of the Section 3 Regulations and were informed by the EPA representatives that certain portions of the section 3 Regulations (40 CFR Part 162) and the section 6 Regulations (40 CFR Part 164) would have to be modified to accommodate the 1975 Amendments to the Act. Mr. Ronald Hausmann, Office of General Counsel, EPA, briefly reviewed the preliminary planning within EPA for meeting the changes in section 3 made necessary by the passage of Pub. L. 94-140 in November, 1975. He discussed the

[1] Minetti and West, members, filed the attached concurrence and dissent (filed as part of the original document).

initiation of a new informational hearing process, the changes necessary for meeting the 3(c)(1)(D) data requirements, and the adjustments now necessary to meet the 60 day review requirements for the U.S. Department of Agriculture and Scientific Advisory Panel.

The state representatives expressed their continuing concern with the so-called "cancer policy" as reflected in the Preamble, particularly as it relates to triggering a rebuttable presumption because of the occurrence of any type of tumor, in any species of test animal, at any level of feeding; and with the section 3 Regulations, particularly those pertaining to submission of data and the "rebuttable presumption" concept. It was emphasized that a public agency purporting to have a significant contribution to the National concern for cancer would normally be expected to request thorough scientific and public review of these principles before instituting them as regulatory policy. The state representatives were informed that EPA is not planning to open up section 3 Regulations to additional amendments at this time (other than those changes mandated by the 1975 Amendments to the Act.) EPA representatives suggested that the Working Group's concerns relative to the "cancer policy" be referred to the EPA Cancer Assessment Group for consideration. The Working Group reiterated its concern over the September WG/RC meeting policy recommendation, viz. "to refer the nine cancer principles without further delay for thorough scientific review to the National Academy of Sciences or some other peer group of comparable national scientific stature."

The Working Group made a detailed analysis of the section 3 Regulations. The analysis gives due consideration to the impact of the section 3 Regulations upon reregistrations and new registrations and upon the states' requirements for registering pesticides under the provisons of Section 24(c) for special local needs. The EPA representatives suggested that a number of the concerns expressed with certain aspects of the section 3 Regulations could be allayed by incorporating more specificity into the Registration Guidelines. The state Working Group members did not agree with the EPA representatives that directives (e.g., "the registrant shall * * *") in section 3 Regulations could be negated routinely by section 3 guidelines.

The Working Group determined that suggested changes, categorized into "editorial" suggestions and "substantive" resolutions, would be referred to the State-Federal FIFRA Implementation Advisory Committee for action at their March meeting. The Working Group recommended adoption of the ten resolutions by SFFIAC and also recommended that the Committee forward these proposed revisions to the Administrator for consideration. Such revisions would have to be published as EPA proposed amendments in the FEDERAL REGISTER, subject to the required comment period.

The SFFIAC passed an overall resolution urging EPA to review areas of section 3 drawn to the Agency's attention in the WG/RC report, and to consider and respond to the recommendations.

Specific resolutions for revisions reference the Section and the 1975 FEDERAL REGISTER page number of section 3 as follows:

1. Section 162.3 Definitions, page 28272.

Resolution 1: That a new definition (qq) be added as follows: "(qq) The term 'Use in a manner inconsistent with the labeling' means only:

(1) Application to a crop, animal, or site not in the labeling claims.

(2) Use at dosages or rates exceeding those in the labeling.

(3) Failure to follow restrictions or limitations on the labeling, or

(4) Failure to follow labeling directions in the storage or disposal of pesticides."

Comment: The state Working Group members pointed out that the addition of this definition will set forth the areas of concern over misuse for purposes of Section 12(a)(2)(G) of FIFRA. Minor variations from the exact labeling wording would not be included. Further need for a PEPS in this area would be eliminated, and guidance would be provided for enforcement. The present (qq) should be changed to (rr) etc.

2. Section 162.3 Definitions, page 28272.

Change old (qq) to new (rr). "(rr) The term 'use pattern' means the manner in which a pesticide is applied and includes the following parameters of pesticide application: [strike—(1) Target Pest] (1) Crop or animals treated; (2) Application site; and (3) Application technique, rate, and frequency."

Resolution 2: That sub par. (1) of new (rr) "Target pest" be deleted from this definition and the remaining paragraphs be appropriately renumbered.

Comment: The term "target pests" does not represent a use pattern as compared to the other parameters.

3. Section 162.8(b)(3)(ii) Environmental Chemistry; (b)(4) Product Hazard; (b)(4)(ii)(A) Hazard to non-target organisms, page 28276.

Resolution 3: That (b)(3)(ii)(A)(1) & (2) and (b)(4) be rewritten and that (b)(4)(ii)(A) be revised as indicated below:

Delete: 162.8(b)(3)(ii)(A)(1)(2).

Add new: 162.8(b)(3)(ii)(A)(1)(2).

"(A) If the pesticide is intended for use in a manner which could reasonably be expected to cause adverse effects on the environment, data necessary to evaluate the environmental impact will be required. This will normally include the following: (1) Studies to show the persistence and accumulation of the active ingredient or its metabolites in the environment.

(2) Degradation studies to show the modes and rate of breakdown under anticipated conditions of use."

Delete: 162.8(b)(4) Product Hazard.

Add new: 162.8(b)(4) Product Hazard.

"(4) *Product hazard.* Applications involving new active ingredients or new formulations or new uses for currently registered pesticides must be supported by test results which assess the risk to man and the environment. The required testing will normally include laboratory studies on both the active ingredient(s) and the pesticide formulation. Field studies with the pesticide formulation may be necessary. Further studies may be required which involve metabolites, degradation products, and/or reaction products. The required data must be submitted by the Applicant as prescribed in the Registration Guidelines. This will normally include the following types of data:"

Amend: Section 162.8(b)(4)(ii)(A) as follows: "Data on acute and subacute toxicity to avian species and acute toxicity to fish will be required *if the proposed use can reasonably be expected to result in exposure of birds and fish.*"

Comment: In each case the proposed revision describes more clearly and accurately the type of data actually needed for the evaluation to be made. The data requested indicate submittal if the intention for use should require, but does not automatically stipulate that data "will be required" or the "applicant shall submit" regardless of any need for the data. The amended wording permits EPA to require data as necessary.

4. Section 162.8(c)(3)(i), (ii), (iii), and (iv) Subacute and chronic toxicity and (c)(4) Reentry and disposal data, page 28277.

Resolution 4: That the context of the above listed subparagraphs be revised or deleted to remove language that precludes consideration of a negligible tolerance concept and again requires submission of data regardless of need. Specifically, the removal or replacement of portions of the above subparagraphs be made as follows:

162.8(c)(3)(i) (revisions are *italicized*, deletions are noted):

"(i) Teratogenic evaluation of the active ingredient(s) in a mammalian test system will be required *only* if the pesticide use may reasonably be expected to result in exposure to female humans.

"(ii) Oncogenic evaluation of the active ingredient(s) will be required if [strike—(A)] the active ingredient(s), its metabolite(s), or degradation product(s) contains a substance structurally related to a known [strike—or suspected] oncogenic agent, [strike—or (B) the pesticide needs a tolerance or an exemption from the requirement to obtain a tolerance [see Section 162.7(d)(1)(v)]].

"[strike—(iii) Chronic feeding studies of the active ingredients will be required (A) for pesticides which need a tolerance or an exemption from the requirement to obtain a tolerance or (B)] *(iii) Toxicity data required to support tolerances or exemptions from the requirement of tolerances under the Federal Food, Drug, and Cosmetic Act are set forth in 40 CFR, Part 180. Chronic feeding studies on the active ingredients may be required* for pesticides intended for use in residences, enclosed working spaces, or their immediate vicinity *where continuous or repeated exposures to humans will likely result.* Such chronic feeding studies shall include, at least, studies of effects on the central nervous system, hematopoietic system, and histological changes in the liver, kidney, and both male and female reproductive systems.

"[strike—(iv) Reproduction studies of the active ingredient will be required for pesticides which need a tolerance or an exemption from the requirement to obtain a tolerance. Such reproduction studies shall consist of a three generation investigation.]

"(4) Reentry and disposal data. (i) Foliar residue and exposure information will be required for products containing cholinesterase-inhibiting ingredients, and such other ingredients as are specified in the Registration Guidelines, *if workers are likely to be exposed to treated foliage under customary practices.* Such studies shall be designed to provide data sufficient to [strike—establish satisfactory] *determine any necessary* precautions to protect persons reentering treated areas."

Comment: Deletion of the above inflexible requirements for data clarifies the tolerance requirements with relation to the Federal Food, Drug, and Cosmetic Act and permits consideration of negligible residue to tolerances based on 90 day feeding studies as provided in the regulations augmenting the Federal Food, Drug, and Cosmetic Act during the past ten years. The state members consider this action essential to effective and safe pesticide usage.

5. Section 162.10(h)(2)(i)(B) Table of Precautionary Statements, page 28280.

Resolution 5: That the table be revised to place precautionary statements in the correct columns as indicated by the deleted statements below:

Toxicity category	Precautionary statements by toxicity category	
	Oral, inhalation, or dermal toxicity	Skin and eye local effects
I	Fatal (poisonous) if swallowed (inhaled or absorbed through skin). Do not breathe vapor (dust or spray mist). Do not get in eyes, on skin, or on clothing. (Front panel statement of practical treatment required.)	Corrosive, causes eye and skin damage (or skin irritation). Do not get in eyes, on skin, or on clothing. Wear goggles or face shield and rubber gloves when handling. [*Strike—Harmful or fatal if swallowed.*] (Appropriate first aid statement required.)
II	May be fatal if swallowed (inhaled or absorbed through the skin). Do not breath vapors (dust or spray mist). [*Strike—Do not get in eyes, on skin, or on clothing.*] (Appropriate first aid statement required.)	Causes eye (and skin) irritation. Do not get in eyes, on skin or on clothing. [*Strike—Harmful if swallowed.*] (Appropriate first aid statement required.)
III	Harmful if swallowed (inhaled or absorbed through the skin). Avoid breathing vapors (dust or spray mist). [*Strike—Avoid contact with skin (eyes or clothing).*] (Appropriate first aid statement required.)	Avoid contact with skin, eyes or clothing. In case of contact immediately flush eyes or skin with plenty of water. Get medical attention if irritation persists.
IV	(No precautionary statements required.)	(No precautionary statements required.)

Comment: These statements supposedly "depict[s] typical precautionary statements" and should be corrected without delay for guidance of all concerned..

6. Section 162.10(h)(2)(ii) Environmental Hazards Subparagraph (D), page 28280.

Resolution 6: That the words *"non-target"* be inserted as illustrated below:

"(D) If either accident history or field studies demonstrate that use of the pesticide may result in fatality to *non-target* birds, fish or mammals, the statement "This pesticide is extremely toxic to wildlife (fish)' is required."

Comment: The added word permits the continuation of avicides, fish toxicants, and similar essential animal control products otherwise left in doubtful status by the original statements.

7. Section 162.11(a)(3)(i)(A) Hazard to Humans and Domestic Animals, page 28281.

162.11(a)(3)(i)(B) Hazard to Wildlife, page 28281.

162.11(c)(1)(iii) Outdoor Applications, page 28283.

162.11(c)(2)(iii) Outdoor Applications, page 28284.

NOTE.—The above references are to parts of Section 162.11 which are similar in appearance and application, but do have small but important variances. While they are treated as one resolution, each revision has been included to account for the variances.

Resolution 7: That 162.11(a)(3)(i)(A)(2) be amended as follows: "(2) Has an acute dermal LD50 of [strike—6g/kg] 400 mg/kg or less as diluted for use in the form of mist or spray;"

Comment: 400 mg/kg is a more practical breakpoint for non-domestic use and represents the lower ⅕ of 2000 mg/kg toxicity range for domestic application. The ratio of 40 mg/kg for the formulation to 400 mg/kg for the diluted-for-use spray conforms with the historic 1–10 ratio of 50–500–5000 used for pesticide classification. Rate of active ingredient per acre has proven to be more significant in use experience than spray concentration.

That 162.11(a)(3)(i)(B)(1), (2), and (3), Hazard to Wildlife (pg. 28281), 162.11(c)(1)(iii)(A), (B), and C, Outdoor Applications (pg. 28283), and 162.11(c)(2)(iii), (A), (B), and (C) Outdoor Applications (pg. 28284) be deleted and replaced as follows:

Delete: 162.11(a)(3)(i)(B)(1), (2), and (3).

Add: "(B) Hazard to Wildlife. (1) The directed use results in residues on foliage or other mammalian wildlife feed 12 hours after application at levels equal to an acute oral LD50 dose on the volume of such feed the exposed beneficial species would normally eat in one day. LD50 dosages to be calculated for representative species as set forth in registration guidelines.

"(2) The directed use results in residues on plants, plant parts such as fruit and seed or other avian feed 12 hours after application at levels equal to an acute oral LD50 dose on the volume of such feed the exposed beneficial species would normally eat in one day. LD50 dosages to be calculated for representative species as set forth in registration guidelines.

"(3) For aquatic treatments, the directed use results in residues in water greater than one-half the acute LC50 for beneficial aquatic organisms likely to be exposed. LC50 dosages to be determined for representative species as set forth in registration guidelines."

Delete: 162.11(c)(1)(iii)(A), (B), and (C).

Add: "(A) The directed use results in residues on foliage or other mammalian wildlife feed 12 hours after application at levels equal to one-fifth the acute oral LC50 dose on the volume of such feed the exposed beneficial species would normally eat in one day. LD50 dosages to be calculated for representative species as set forth in registration guidelines.

"(B) The directed use results in residues on plants, plant parts such as fruit and seed or other avian feed 12 hours after application at levels equal to one-fifth the acute oral LD50 dose on the volume of such feed the exposed beneficial species would normally eat in one day. LD50 dosages to be calculated for representative species as set forth in registration guidelines.

"(C) For aquatic treatments, the directed use results in residues in water greater than one-tenth the acute LC50 for beneficial aquatic organisms likely to be exposed. LC50 dosages to be determined for representative species as set forth in registration guidelines."

Delete: 162.11(c)(2)(iii) (A), (B), and (C).

Add: "(A) The directed use results in residues on foliage or other mammalian wildlife feed 12 hours after application at levels equal to one-fifth the acute oral LD50 dose on the volume of such feed the exposed beneficial species would normally eat in one day. LD50 dosages to be calculated for representative species as set forth in registration guidelines.

"(B) The directed use results in residues on plants, plant parts such as fruit and seed or other avian feed 12 hours after application at levels equal to one-fifth the acute oral LD50 dose on the volume of such feed the exposed beneficial species would normally eat in one day. LD50 dosages to be calculated for representative species as set forth in registration guidelines.

"(C) For aquatic treatments, the directed use results in residues in water greater than one-tenth the acute LC50 for beneficial aquatic organisms likely to be exposed. LC50 dosages to be determined for representative species as set forth in registration guidelines."

Comment: The deletion of the requirement for residue analysis *immediately* following application and replacing with *12 hours after* application provides a midpoint observation within the 24 hour or daily feeding cycle for most wildlife. A pesticide having high toxicity but rapid breakdown capability would be measured at the most severe exposure immediately after application, whereas it might be the pesticide of choice because of lack of residual damages. The six inch layer of water as an aquatic depth limitation has no real significance when measuring aquatic effects and is not used in general aquatic studies as a general practice. The above revisions provide EPA with authority to presume against uses which cause significant wildlife damage and provide practical guidelines for the manufacturer, the educational specialist, and the user.

8. Section 162.11(a)(3)(ii) Chronic Toxicity (A), (B), and (C), page 28282.

Resolution 8: That the following additions and deletions be made as indicated below:

"(ii) *Chronic Toxicity.* (A) Induces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation or dermal exposure, or induces mutagenic effects, as determined by multitest evidence *at any dosages up to a level which is higher than could reasonably be expected from the directed use, taking into account ample margins for safety;*

"(B) Produces any other chronic or delayed toxic effect in test animals at any dosage up to a level, as determined by the Administrator which is substantially higher than that to which humans can reasonably be anticipated to be exposed, taking into account ample margins of safety; or

"(C) Can reasonably be anticipated to result in significant [strike—local, regional, or national] population reductions in *beneficial* nontarget organisms. [strike—or fatality to members of endangered species."]

Comment: The addition to subparagraph (A) provides a more meaningful reference to pracitcal application rates as now included in subparagraph (B). As nationally recognized standards for measuring oncogenic and mutagenic responses have not been established within the scientific community, these requirements should contain some reference to practical application and labeled use rates. Restricting the dosage rates to those determined by the Administrator allows use of those rates well established through long use and experience. The population reduction should be focused on beneficial nontarget species. As written it could include population reductions in non-target weeds.

9. Section 162.11(c)(1)(i) Domestic Applications, page 28283.

Resolution 9: That the following additions and deletions be made as indicated below:

"(i) Domestic applications. A pesticide use(s) intended for domestic application will be a candidate for general use classification if the pesticide formulation *does not meet the criteria for toxicity categories I or II, i.e.* (A) [no change]; (B) [no change]; (C) [no change]; (D) [no change]; (E) Has an acute oral LD50 greater than [strike—1.5 g/kg] *500 mg/kg* for the formulation [strike—as diluted for use;] and".

Comment: The additional wording following the lead sentence makes the wording more uniform with the requirements for previously registered products. The values are essentially the same and

this addition clarifies this. Oral toxicity of spray mix should not be the determining factor. The oral toxicity of the formulation is more relevant for domestic, home and garden use products. 500 mg/kg for formulation is the breakpoint between categories II and III.

10. Section 162.11(c)(1)(ii) Non-domestic applications, page 28283.

Resolution 10: That subparagraph (ii)(B) be revised as follows: "(B) Has an acute dermal LD50 greater than [strike—16 g/kg] *2000 mg/kg* for the formulation as diluted for use as a mist or spray;"

Comment: The criteria of 16 grams/kg acute dermal toxicity is surely a misprint. This means that a product would be restricted if the calculated lethal dose for a 70 kg man was less than 1120 grams or 2.2 pounds of spray mix. The likelihood of this much spray mix coming in contact with the skin is extremely remote, if possible. If the toxicity for the formulation is directly proportional to that of the spray mix, the dilution factor between the 200 mg/kg for the formulation and the 16 grams for the spray mix is 1–80. A dilution ratio of 1–10 would be conservative and would change the calculated lethal dose for a 70 kg man to 140 grams or approximately 0.3 pounds of spray mix. This is still a highly unlikely exposure when you consider that the LD50 values were obtained from continuous exposure over 24 hours of the test animals. (40 CFR 162.81).

[FR Doc.76–18742 Filed 6–29–76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

NATIONAL INDUSTRY ADVISORY COMMITTEE

Notice of Renewal

The Federal Communications Commission has determined that renewal of the National Industry Advisory Committee (NIAC) for an additional two-year period is necessary and in the public interest.

The National Industry Advisory Committee was established in 1958 to furnish advice and recommendations to the Commission concerning (1) the design and implementation of operational emergency communications policies, plans and procedures; (2) proposed tests and exercises of operational emergency procedures; and (3) the establishment of authentication procedures. The NIAC recommends to the Commission procedures to incorporate all FCC-licensed and regulated services into the established emergency communications network.

The renewal of the National Industry Advisory Committee is effective July 26, 1976 and will extend until July 25, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76–18956 Filed 6–29–76;8:45 am]

TELEPHONE EQUIPMENT REGISTRATION PROGRAM

Stay Partially Lifted

JUNE 17, 1976.

On June 16, 1976, the U.S. Court of Appeals for the Fourth Circuit lifted part of its earlier order staying the FCC's First Report and Order and Second Report and Order in Docket 19528. In yesterday's action the court vacated its earlier stay as it applied to customer-provided ancillary and data equipment. The stay is not vacated, however, for extension telephones, main telephones, PBXs or key telephone systems, or for carrier-provided equipment.

(The FCC's decisions in Docket 19528 established a registration program designed to allow users of the nationwide telephone network to connect terminal equipment to the network without the need for carrier-supplied protective couplers, provided that such equipment complies with standards incorporated into the registration program to protect the network against harm.)

In view of the court's order, the FCC will now consider applications for registration of data and ancillary equipment. Applications for data and ancillary equipment which have previously been filed will be put on public notice beginning June 21, 1976. Comments on applications for registration of such data and ancillary equipment which were placed on public notice prior to the imposition of the stay (i.e., on April 26 and May 3, 1976) will be due no later than July 12, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76–18954 Filed 6–29–76;8:45 am]

PRIVACY ACT OF 1974

Report on New System of Records

1. Pursuant to the notice requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (e)(4), the Federal Communications Commission hereby gives notice of the proposed establishment of a system of records which contains information about individuals, set forth below.

2. Interested persons are invited to submit comments on the "routine uses" of the system of records on or before July 30, 1976. An original and 7 copies of all comments shall be furnished to the Commission. Comments will be available for inspection in the Commission's Cable Television Reference Room. All relevant and timely comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into account other relevant information before it in addition to the specific comments invited by this Notice.

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

System name:

Cable Operator Ownership File (AOR).

System location:

1919 M St. NW., Washington, D.C.

Categories of individuals covered by the system:

For each corporate operator of a cable television system or each corporation owning 25% or more of the stock of such a corporate operator: (A) Officers, (B) Directors, (C) Stockholders owning 3% or more of the stock.

Categories of records in the system:

(A) Owner Record—consisting of information furnished on FCC Annual Report of Cable Television Systems form 325, Schedule 3, blocks 1 thru 6.

(B) Controlling Person Record—consisting of information furnished on FCC Annual Report of Cable Television Systems form 325, Schedule 3, block 7, and Schedule 4.

Authority for maintenance of records:

47 U.S.C. §§ 151–155, 301, 302a, 303, 307, 308 & 403.

Routine uses of records maintained in the system, including categories of users and the purposes of such users:

(A) Commission staff—utilize records to monitor communications media ownership configurations and monopolies which are not in the public interest. Records are routinely reviewed during processing of authorizations to ascertain that the record is current and that the applicant for the authorization is entitled under the Commission's Rules to its grant.

(B) Members of the public—pursuant to Commission rule, members of the public are allowed to access data system file listings or the source forms, if necessary.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Permanent magnetic tape file, temporary magnetic disc file, and temporary physical file for FCC 325 source forms.

Retrievability:

Data system records are retrievable by any specified characteristic of any data field or character. FCC 325 source forms are retrievable alphabetically by owner or controlling person name.

Safeguards:

Not applicable. Files are available for public inspection.

Retention and disposal:

Magnetic tape files are kept permanently. FCC 325 source forms are transferred to WNRC after 3 years and destroyed 10 years later.

System manager and address:

Chief, Cable Television Bureau, 1919 "M" St., N.W., Washington, D.C. 20554.

Notification procedures:

Same as above.

Record access procedures:

Cable Television Public Reference Room, 2025 "M" St., N.W., Washington, D.C. 20554 (202) 632-9797.

Contesting record procedures:

Chief, Cable Television Bureau, 1919 "M" St., N.W., Washington, D.C. 20554.

Record source categories:

Cable television operators who file FCC Form 325; individuals named in Schedules 3 and 4 of Form 325.

[FR Doc.76-18951 Filed 6-29-76;8:45 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

INTEREST ON DEPOSITS

Order Granting Temporary Suspension of Section 329.4(d)

The recent collapse of the Teton Dam in eastern Idaho caused widespread flooding in the Snake River Valley. The resulting property damage and economic loss have been estimated in the hundreds of millions of dollars. The affected region was declared a major disaster area by the President on June 6, 1976 pursuant to § 301 of the Disaster Relief Act of 1974 (42 U.S.C. § 5141).

Under § 329.4(d) of the Corporation's regulations (12 CFR 329.4(d)), when an insured nonmember bank pays a time deposit prior to maturity, the depositor must forfeit three months' interest on the amount withdrawn and the rate of interest on the amount withdrawn is reduced to the rate paid on savings accounts.

In light of the emergency nature of the dam disaster in Idaho and the immediate need for funds for reconstruction and similar purposes, § 329.4(d) will be temporarily suspended so as to allow depositors who have suffered disaster-related losses to have access to funds in time deposits prior to maturity without being penalized.

This order extends only to time deposits held by insured nonmember banks. However, since the order is intended to inure to the benefit of the victims of the disaster, without regard to whether particular depositors are residents of the disaster area, banks outside of the disaster area will be authorized to waive the penalty pursuant to this order provided that the depositor has suffered a disaster-related loss occasioned by the Teton Dam's collapse. The program will operate on a volunteer basis only. It is up to each insured nonmember bank to decide whether to allow the withdrawals authorized by this order. In addition, banks which take advantage of this temporary suspension have the responsibility to ascertain that individual depositors seeking to withdraw time deposits prior to maturity did in fact suffer a disaster-related loss. In this regard, it is suggested that appropriate documentation may consist of photographs of the damaged property, cancelled checks for repairs, insurance claims documents, or the like. In appropriate cases, actual knowledge by a bank officer of the fact of a loss will suffice. Also, any depositor seeking withdrawal pursuant to this exception will be required to execute a statement to the effect that he is seeking withdrawal pursuant to a disaster-related loss occasioned by the dam collapse.

The suspension will be retroactive to June 6, 1976, the date of the Presidential disaster declaration, and will expire on December 31, 1976. This period will permit a full assessment of the casualty losses and allow sufficient time for eligible depositors to withdraw funds without penalty and begin the rebuilding process.

Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) authorizes the FDIC to prescribe rules and conditions for the payment by insured State nonmember banks of time deposits prior to maturity. Pursuant to that authority, the FDIC's Board of Directors has determined it to be in the public interest to grant the temporary suspension of § 329.4(d) with respect to depositors suffering a disaster loss in the Teton Dam disaster, effective June 6, 1976, to expire at 12 midnight December 31, 1976.

The requirements of Sections 553(b) and 553(d) of Title 5 of the United States Code and §§ 302.1, 302.2 and 302.5 of Title 12 of the Code of Federal Regulations with respect to notice, public participation, and deferred effective date were not followed in connection with the promulgation of this order because the order enlarges existing rights, grants an exemption, is limited both in duration and with respect to the class of persons affected thereby, because of the immediacy of the need for this temporary suspension, and because the Board of Directors found that the public interest would best be served by making the order effective immediately.

By order of the Board of Directors, effective, June 25, 1976.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc.76-18943 Filed 6-29-76;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CONSUMER AFFAIRS/SPECIAL IMPACT ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Consumer Affairs/Special Impact Advisory Committee will meet Thursday, July 15, 1976, at 9 a.m., in the Empire Room, Executive Inn, 3232 W. Mockingbird, Dallas, Texas.

The Committee was established to provide the Administrator, FEA, with diversified information and experiences possessed by a wide range of highly qualified individuals who have been extensively involved in planning, development, and implementation of programs to remedy the problems of the consumer, the poor, the elderly, and the handicapped persons in rural and urban America.

The agenda for the meeting is as follows:

1. Priorities for the Rechartered CA/SI Advisory Committee.
2. Functions of CA/SI Advisory Committee and Sub-committees.
3. Technical Assistance to CA/SI Advisory Committees and Sub-committees.
4. Review of FEA Regulations—Presidential Task Force to Simplify and Improve FEA Regulations.
5. Public Comments.

Subcommittees may meet informally in Dallas, the preceding evening, at the discretion of the Subcommittee Chairmen; the meetings will be open to the public. For further information on Subcommittee activities, call Lois G. Weeks, Director, Advisory Committee Management at (202) 961-7022.

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 who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform the Director, Advisory Committee Management at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Officer.

Minutes of the meeting will be made available for public inspection at the Federal Energy Administration, Washington, D.C.

Issued at Washington, D.C., on June 25, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-18976 Filed 6-29-76;4:14 pm]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Notice of Effectiveness for Certain Construction Orders; Determination of Environmental Impact

Pursuant to 10 C.F.R. §§ 208.4(c) and 307.7, the FEA hereby gives notice that, in accordance with 10 C.F.R. §§ 307.7(c) and 208.3(a)(4), it has performed an analysis and review of the environmental impact of the issuance to the following powerplants of Notices of Effectiveness of construction orders:

Docket No.	Owner	Powerplant No.	Generating station	Location
OFU-001-N	Alabama Power Co	2	J. H. Miller	West Jefferson, Ala.
OFU-002-N	do	3	do	Do.
OFU-003-N	do	4	J. H. Miller (formerly 1981 unnamed).	Do.
OFU-009-N	City of Painesville, Ohio		Painesville Municipal	Painesville, Ohio.
OFU-027-N	Southwestern Electric Power Co	2	Welsh	Cason, Tex.
OFU-028-N	do	3	do	Do.
OFU-029-N	The Cincinnati Gas & Electric Co	2	East Bend	Boone County, Ky.
OFU-033-N	Central Illinois Public Service Co	2	Newton	Jasper County, Ill.
OFU-034-N	Central Power & Light Co	1	Coleto Creek	Goliad County, Tex.
OFU-035-N	Dairyland Power Cooperative	6	Alma	Alma, Wis.
OFU-036-N	Iowa Southern Utilities Co	1	Ottumwa	Chillicothe, Iowa.
OFU-037-N	Kansas City Power & Light Co	1	Iatan	Iatan, Mo
OFU-045-N	Montana-Dakota Utilities Co	1	Coyote Station	Beulah, N. Dak.
OFU-048-N	Oklahoma Gas & Electric Co	1	Sooner	Noble County, Okla.
OFU-049-N	do	2	do	Do.
OFU-050-N	Portland General Electric Co		Boardman	Boardman, Oreg.
OFU-051-N	Public Service Co. of Colorado	1	Pawnee Plant (formerly Northeastern 1).	Brush, Colo.
OFU-052-N	Public Service Co. of Oklahoma	3	Northeastern	Oologah, Okla.
OFU-053-N	do	4	do	Do.
OFU-054-N	Public Service Co. of New Mexico, and Tucson Gas & Electric Co.	3	San Juan	Waterflow, N. Mex.
OFU-055-N	do	4	do	Do.
OFU-056-N	Sierra Pacific Power Co	1	North Valmy No. 1 (formerly unnamed).	Humboldt County, Nev.
OFU-061-N	Southern Illinois Power Cooperative	4	Southern Illinois	Marion, Ill.
OFU-062-N	Southern Indiana Gas & Electric Co	1	A.B. Brown	West Franklin, Ind.
OFU-063-N	Southwestern Electric Power Co	1	Flint Creek	Gentry, Ark.
OFU-065-N	The Dayton Power & Light Co., and The Cincinnati Gas & Electric Co.	1	Killen	Adams County, Ohio.
OFU-066-N	do	2	do	Do.
OFU-069-N	The Kansas Power & Light Co	2	Jeffrey Energy Center.	St. Marys, Kans.
OFU-070-N	do	3	do	Do.
OFU-071-N	do	4	do	Do.

On June 30, 1975, the FEA issued construction orders to the above listed powerplants in the early planning process, which required the powerplants to be designed and constructed to be capable of using coal as their primary energy source. (40 F.R. 28430, July 3, 1975). The construction orders provided, however, that in accordance with the requirements of 10 C.F.R. Parts 303 and 307, the orders would not become effective until FEA had considered the environmental impact of the orders, pursuant to 10 C.F.R. § 307.7, and until FEA had served the affected powerplants with a Notice of Effectiveness.

On the basis of an analysis and review of the effect on the human environment of issuance of the Notices of Effectiveness, FEA has determined it is clear that issuance of a Notice of Effectiveness for construction orders to the above listed powerplants is not a "major Federal action significantly affecting the quality of the human environment." National Environmental Policy Act, at 42 U.S.C. 4332 (2) (C). Therefore pursuant to 10 C.F.R. § 208.4(c) FEA concludes that an environmental impact statement is not required.

Additional copies of this Negative Determination and copies of the analyses upon which it is based are available upon request from the FEA Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Copies of the documents are also available for public review in the FEA Information Access Reading Room, Room 3116, 12th and Pennsylvania Avenue, N.W., Washington, D.C.

Interested persons are invited to submit data, views, or arguments with respect to the environmental impacts of the notices of effectiveness and the associated environmental analyses to Executive Communications, Box HR, Room 3309, Federal Energy Administration, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation, "Negative Determination—Construction Order to _____." Fifteen copies should be submitted on or before July 20, 1976.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., June 25, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.76-18977 Filed 6-25-76;4:15 pm]

STATE CONSERVATION PROGRAM SUBCOMMITTEE OF THE FOOD INDUSTRY ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the State Conservation Program Subcommittee of the Food Industry Advisory Committee will meet Tuesday, July 20, 1976, at 1:30 p.m., Room 3400, FEA Headquarters, 12th & Pennsylvania Avenue, NW., Washington, D.C.

The objectives of this Subcommittee are to make recommendations to the parent Committee with respect to matters concerning food industry aspects of FEA policies and programs falling within the interests of this Subcommittee.

The agenda for the meeting is as follows:

1. Review of Current Status: a. FEA Contingency Plans; b. State Conservation Plans.
2. Definition of Major Issues Affecting Food Systems.
3. Proposed Recommendations to FEA.
4. General Discussion—Remarks from the Floor.

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 who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lois Weeks, Director, Advisory Committee Management, (202) 961-7022, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

Minutes of the meeting will be made available for public inspection in the Reception Room at the Federal Energy Administration, Washington, D.C.

Issued at Washington, D.C., on June 25, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-18978 Filed 6-29-76;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[No. 76-446]

IDAHO DISASTER AREA

Waivers of Premature Withdrawal Penalties Authorized

JUNE 24, 1976.

1. a. Pursuant to the provisions of § 508.10-1 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 508.10-1), the Board today authorized member institutions of Federal Home Loan Banks to waive the penalty provided for in pertinent regulations for withdrawal prior to the expiration of the term of all or any part of any savings deposit or other savings account belonging to any person, firm, or other entity whose property in the Idaho counties referred to below was damaged as a result of collapse of the Teton Dam in Idaho on June 5, 1976.

b. On June 6, the President, pursuant to Section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) designated the following Idaho counties as a major disaster area: Bingham, Bonneville, Fremont, Jefferson and Madison.

2. a. This action is designed to relieve financial hardship occasioned by property loss in the disaster resulting from the collapse of the Dam, and will remain in effect through December 31, 1976.

b. The waiver authorized herein may be made effective with respect to withdrawals beginning on June 6, 1976.

3. Any member institution is authorized to waive a penalty as referenced above only after receipt of a written statement from the accountholder certifying as to and describing the disaster-related loss to property of the accountholder in the above counties.

By the Federal Home Loan Bank Board.

[SEAL] J. J. FINN,
Secretary.

[FR Doc.76-18962 Filed 6-29-76;8:45 am]

FEDERAL POWER COMMISSION

[Project No. 2506]

ESCANABA POWER CO.

Informal Conference

Public notice is hereby given that an informal conference will be held on Monday, July 12, 1976, at 1:00 P.M. at the Federal Power Commission, 825 N. Capitol St., Washington, D.C. to discuss matters connected with an application for rehearing filed by Escanaba Paper Company (Escanaba) on May 12, 1976. The application concerns the Escanaba Project No. 2506, located on the Escanaba River in Delta and Marquette Counties, Michigan. Escanaba requested the informal conference with the Staff to discuss recreational development, wastewater treatment, minimum flow releases, and other matters related to their application for rehearing. The Commission issued a license to Escanaba on April 12, 1976, and granted rehearing for the purpose of further consideration by order issued June 7, 1976. Any person interested in attending this informal conference may make arrangements to do so.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-18928 Filed 6-29-76;8:45 am]

[Project No. 2426-California]

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER

Availability of Environmental Impact Statement for Inspection

Notice is hereby given that on or about June 30, 1976, as required by the Commission Rules and Regulations under Order 415-C, issued December 18, 1972, a final environmental impact statement prepared by the Commission's staff pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-100) was placed in the public files of the Federal Power Commission. This statement deals with the environmental impact of an application for license for the partially constructed California Aqueduct Project No. 2426, located in Alamedg Contra Costa, Fresno, Kern, Kings, Los Angeles, Merced, Riverside, San Bernardino, San Joaquin, San Luis Obispo and Stanislaus Counties, California. This statement is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426 and its San Francisco Regional Office located at 555 Battery Street, San Francisco, California 94111. Copies may be ordered from the Commission's Office of Public Information, Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-18929 Filed 6-29-76;8:45 am]

FEDERAL RESERVE SYSTEM

BANK SHARES INC.

Merger Application

Bank Shares Incorporated, Minneapolis, Minnesota ("Applicant"), a bank holding company within the meaning of the Bank Holding Company Act ("Act"), applied for the Board's approval under section 3(a)(5) of the Act (12 U.S.C. 1842(a)(5)) to merge with Mid America Bancorporation, Inc., Minneapolis, Minnesota ("Mid America"), a bank holding company within the meaning of the Act. Applicant would be the surviving corporation.

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 controls five banks with aggregate deposits of $259 million, representing approximately 1.88 per cent of the total deposits held by commercial banks in Minnesota, and is the fifth largest bank holding company in that State.[1] Mid America controls seven banks with aggregate deposits of $118 million, representing approximately 0.85 of one per cent of the total deposits held by commercial banks in the State, and is Minnesota's seventh largest bank holding company. Consummation of the proposed merger would result in Applicant's control of approximately 2.73 per cent of total deposits held by the State's commercial banks, and Applicant would become the State's fourth largest bank holding company.

Four of Applicant's subsidiary banks are located in the Minneapolis-St. Paul banking market,[2] and the fifth is located in the Rochester banking market.[3] Of Mid America's seven banking subsidiaries, six are located in the Minneapolis-St. Paul banking market and one is in the Hutchinson banking market.[4] The Rochester and Hutchinson markets are approximately 85 and 60 road miles distant, respectively, from the Minneapolis-St. Paul market, and approximately 125 road miles from each other. Since numerous other banks intervene between these markets and large distances separate them, it appears unlikely that approval of the subject application would foreclose any significant existing or potential competition between Applicant and Mid America in the Rochester and Hutchinson markets.

Accordingly, the primary area in which the proposed transaction may have anticompetitive effects is in the Minneapolis-St. Paul banking market. Applicant is the fourth largest commercial banking organization in that market with total market deposits of $206.5 million, representing 2.9 per cent of deposits held by commercial banks in the market. Mid America ranks sixth with total market deposits of $101.3 million, representing a market share of 1.4 per cent. Consummation of the proposed transaction would result in Applicant holding 4.3 per cent of total market deposits and Applicant would thereby become the market's third largest banking organization. The two largest banking organizations hold 67.7 per cent of total market deposits. While consummation may stimulate competition between the surviving corporation and the two largest banking organizations in the market, the proposed transaction would eliminate some existing competition between Applicant and Mid America, particularly in the area of consumer banking services. Thus, consummation of the merger may have a slight adverse effect on competition.

The Board has indicated on previous occasions that it believes that a bank holding company should constitute a source of financial and managerial strength to its subsidiary banks, and that the Board will closely examine applications with this consideration in mind.

The total amount of Applicant's debt has increased markedly over the last five years. At year-end 1975, Applicant's total borrowed funds equaled 55 per cent of its stated equity capital on a parent company only basis. At year-end 1971, Applicant's parent-only debt-equity ratio was 33 per cent. Applicant's interest expense increased from 19 per cent of operating revenue in 1972 to 50 per cent of operating revenue in 1975. On a consolidated basis, Applicant's debt-equity ratio was 63 per cent. Parent-only long-term debt of Applicant represented 44 per cent of its equity capital at year-end 1974 while other similarly-sized multi-bank holding companies averaged a long-term-debt-equity ratio of 12.3 per cent. The size of Applicant's debt-equity ratio suggests that Applicant lacks the financial flexibility to provide financial

[1] All banking data are as of June 30, 1975, unless otherwise indicated.

[2] The Minneapolis-St. Paul Banking market is approximated by the Minneapolis-St. Paul Ranally Metro Area, adjusted to include all of Carver County.

[3] The Rochester banking market is approximated by northwestern Fillmore County, northeastern Mower County, southeastern Dodge County, and southwestern Wabash County, and all but the eastern portion of Olmsted County.

[4] The Hutchinson banking market is approximated by McLeod County and the northeastern portion of Renville County.

assistance to its subsidiary banks in the event such banks encounter currently unforeseen difficulties.

The Board's concern over the size of Applicant's debt has been previously expressed to Applicant. The Board, in 1972, approved Applicant's proposal to acquire Olmsted County Bank and Trust Company, Rochester, Minnesota ("Rochester Bank"), with the understanding that the debt of $4 million incurred by Applicant would be replaced with equity within one year of the acquisition. To date, that debt remains on Applicant's books. Applicant has asserted that market conditions have made it impossible for Applicant to sell equity securities publicly. However, Applicant, in making the aforementioned commitment and in consumating the Rochester Bank acquisition on that basis assumed the risk of a change in market conditions. It is also Applicant's contention that it has pursued alternatives to equity funding which have resulted in a capital structure similar to that which would have resulted had the commitment been fulfilled. In view of the fact that Applicant's debt position has further deteriorated since the Rochester Bank acquisition was originally proposed, and in view of the continuing need for increased equity capital, the Board is unable to accept Applicant's assertions. Under these circumstances, the Board regards Applicant's long-term noncompliance with the above-mentioned commitment as a factor reflecting adversely upon the financial and managerial resources of Applicant and as providing sufficient grounds for denial of the present proposal.

In contrast, Mid America is a conservatively operated holding company without substantial leverage. Its parent-only total borrowed funds equaled only 18 percent of its stated equity capital as year-end 1975, down from 32 per cent a year earlier and reflecting the efforts of Mid America to reduce its leverage. Consummation of the proposed transaction will result in a combined organization with total parent company debt equalling 41 per cent of stated equity capital and long-term parent company debt equalling 30 per cent of stated equity capital. While this would represent some improvement over Applicant's debt position, it would continue to compare unfavorably with other bank holding companies of similar size. Such improvement in the resulting organization's leverage vis a vis Applicant's leverage would be accomplished at the expense of subjecting Mid America's banking subsidiaries, which should be retaining dividends in order to build capital to support deposit growth, to a substantially more highly leveraged parent. Accordingly, Mid America's banking subsidiaries, which have not provided any significant dividends to Mid America, would be subjected to the possibility of a substantial demand from the resulting parent corporation for dividends.

Generally, the financial conditions of the subsidiary banks of Applicant and Mid America are satisfactory. However, one bank subsidiary of Applicant and one of Mid America have experienced substantial deposit growth without commensurate capital growth and thus are in need of infusions of capital. Irrespective of whether the survivor of the merger would be so leveraged as to inhibit its ability to raise such capital, the pressure for bank dividends represented by the combined debt servicing requirement could have an adverse effect on the capital accounts of those two banks.[5] Accordingly, the Board finds that although the financial resources and future prospects of Mid America are generally satisfactory, the financial resources and future prospects of both Applicant and the combined organization must be regarded as less than satisfactory and lending weight toward disapproval.

The Board regards the managerial resources of Mid America as being satisfactory. But for Applicant's failure to fulfill the above-mentioned commitment, the managerial considerations relating to Applicant would be regarded as generally satisfactory, but would lend no weight toward approval of the proposed transaction. There is no indication that the convenience and needs of the communities to be served are not being met currently. Applicant has asserted that expanded trust services, real estate lending, and increased lending limits would flow from approval of the proposed transaction. While convenience and needs factors lend some slight weight toward approval of the application, they are insufficient to outweigh the adverse factors found by the Board to be present in the application. Accordingly, on the basis of the facts of record, it is the Board's judgment that approval of the application would not be in the public interest and that the application should be denied.

Board of Governors of the Federal Reserve System, June 23, 1976.

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

[FR Doc.76-18948 Filed 6-29-76;8:45 am]

[5] Applicant has projected earnings for the resulting organization as being sufficient to meet the debt servicing requirements of that organization. However, it is the Board's judgment that these projections are unreasonably optimistic. For example, the projections assume a return on average assets for the surviving corporation substantially above the five-year average return on average total resources of either of the merging companies. Further, even if dividends from subsidiary banks could be increased sufficiently to service the combined organizations' debt, this could weaken the capital adequacy of those banks.

CEDAR INVESTMENT CO.

Order Approving Acquisition of Additional Shares of Bank

Cedar Investment Company, Waverly, Iowa ("Applicant"), a registered bank holding company, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 60.5 per cent of the voting shares of State Bank of Waverly, Waverly, Iowa ("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, including those of the Superintendent of Banking for the State of Iowa, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant[1] presently owns directly 24.9 per cent of the voting shares of Bank.[2] With deposits of $24.9 million, Bank controls approximately two-tenths of one per cent of the total deposits held by commercial banks in Iowa and is the 93rd largest bank in that State.[3] Bank, which is the smaller of the two banks in Waverly, controls approximately 24.8 per cent of the total deposits in the relevant banking market (approximated by Bremer County) and is the second largest of eight banks in that market. Applicant proposes to acquire an additional 60.5 per cent of the voting shares of Bank from two individuals who are officers and directors of Bank as well as being the only shareholders, directors, and officers of Applicant. Inasmuch as the proposed transaction is essentially a reorganization of family interests, and Applicant has no other present banking subsidiaries, consummation of the proposal would neither eliminate existing or potential competition, increase the concentration of banking resources, nor have significant adverse effects upon other banks in the relevant area. Accordingly, based upon the foregoing and other facts of record, the Board concludes that competitive considerations are consistent with approval of the application.

[1] Applicant became a bank holding company on December 31, 1970, by virtue of the fact that it owned 61 per cent of the voting shares of American Savings Bank, Tripoli, Iowa ("ASB"). At that time, Applicant also owned 24.9 per cent of the voting shares of Bank. Although Applicant divested itself of its shares in ASB in 1975, it agreed with the Federal Reserve Bank of Chicago to continue its status as a bank holding company with respect to Bank, based upon the fact that pursuant to section 225.2 of the Board's Regulation Y (12 CFR § 225.2 (1976)) Applicant owned 24.9 per cent of Bank's voting shares, and principals of Applicant owned additional shares. Although a rebuttable presumption that Applicant controls Bank exists under section 225.2(b) of the Board's Regulation Y (12 CFR § 225), the Board has made no formal determination that Applicant control Bank.

[2] Applicant also engages in the activity of acting as an agent for the sale of credit-related insurance that is issued in connection with extensions of credit. Applicant, by letter dated May 10, 1976, to the Federal Reserve Bank of Chicago, has agreed to file a section 4(c)(8) application to continue to engage in this nonbanking activity.

[3] All banking data are as of June 30, 1975, unless otherwise indicated.

The financial condition, managerial resources, and future prospects of Applicant and Bank are considered satisfactory and appear to be consistent with approval of the application. Although Applicant will incur some acquisition debt in connection with this proposal, the earnings prospects of Bank appear to provide Applicant with the necessary financial flexibility that will enable Applicant to service its debt without impairing the financial condition of Bank. Accordingly, banking factors are consistent with approval of the application. Considerations relating to the convenience and needs also are regarded as being consistent with approval of the application. Therefore, it is the Board's judgment that 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 or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago, pursuant to delegated authority.

By order of the Board of Governors,[4] effective June 23, 1976.

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

[FR Doc.76-18945 Filed 6-29-76;8:45 am]

MILWAUKEE WESTERN CORP.

Proposed Acquisition of M&H Financial Corp.

Milwaukee Western Corporation, West Palm Beach, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to aquire voting shares of M&H Financial Corporation, Broadview, Illinois. Notice of the application was published on May 28, 1976 in the "Chicago Tribune" and the "Chicago Sun-Times," newspapers circulated in the Chicago metropolitan area, including Broadview, Illinois.

Applicant states that the proposed subsidiary would engage in the following activities: leasing personal property and equipment or acting as agent, broker, or advisor in leasing such property, where at the inception of the initial lease, the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property, plus the estimated total cost of financing the property over the term of the lease. Such leases shall contain such other terms and conditions as shall comply with Section 225.4(a)(6)(a) of Regulation Y issued by the Board of Governors of the Federal Reserve System. Such activities have been specified by the Board in section 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 section 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 concentrations of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question should be accompained by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

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 July 26, 1976.

Board of Governors of the Federal Reserve System, June 24, 1976.

J. P. GARBARINI,
Assistant Secretary of the Board.

[FR Doc.76-18949 Filed 6-29-76;8:45 am]

MILWAUKEE WESTERN CORP.

Proposed Acquisition of Security Industrial Co.

Milwaukee Western Corporation, West Palm Beach, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(22), for permission to acquire voting shares of Security Industrial Company, Broadview, Illinois. Notice of the application was published on May 28, 1976 in the "Chicago Tribune" and the "Chicago Sun-Times," newspapers circulated in the Chicago metropolitan area, including Broadview, Illinois.

Applicant states that the proposed subsidiary would engage in the following activities: making or acquiring for its own account or for the account of others, loans and other extensions of credit such as would be made by a commercial finance company. Such activities have been specified by the Board in section 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 section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

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 July 26, 1976.

Board of Governors of the Federal Reserve System, June 24, 1976.

[SEAL] J. P. GARBARINI,
Assistant Secretary of the Board.

[FR Doc.76-18950 Filed 6-29-76;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-25]

CERTAIN ABOVE-GROUND SWIMMING POOLS

Preliminary Conference

Notice is hereby given that a Preliminary Conference will be held in the above-styled investigation at 10:00 a.m. on June 30, 1976 in the Office of the Administrative Law Judge, Bicentennial Building, Room 617, 600 E Street, NW., Washington, D.C.

The matters which will be discussed include, but will not be limited to the status of discovery in this proceeding, and the motions pertaining thereto. Specifically, the jurisdictional issue raised in Respondents' motions shall not be argued. Counsel shall have the opportunity to present arguments on such issue, at a subsequent time, when they shall have had sufficient time to prepare their positions. Nothing in this Notice and nothing to be discussed at the noticed Preliminary Conference shall be construed to prejudice the rights of the parties as to the jurisdictional issue.

MYRON R. RENICK,
Presiding Officer.

Issued: June 25, 1976.

The Secretary shall serve a copy of this Notice to all parties of record and shall publish this Notice in the FEDERAL REGISTER.

MYRON R. RENICK,
Presiding Officer.

[FR Doc.76-19063 Filed 6-29-76;8:45 am]

[4] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson, and Lilly. Absent and not voting: Governor Partee.

[Investigation No. 337-TA-22]

RECLOSABLE PLASTIC BAGS

Prehearing Conference

Notice is hereby given that a Prehearing Conference in the above styled investigation will be held at 10:00 a.m. on July 1, 1976, in Room 331 of the International Trade Commission Building, 701 E Street, NW., Washington, D.C.

The matters which will be discussed include, but are not limited to, the following:

(1) A schedule for the completion of discovery by all parties.

(2) Devising a schedule and procedure for exchanging lists of designated witnesses and exhibits.

(3) The exchange of proposed stipulations.

(4) Scheduling a date for the hearing.

(5) Scheduling a date for a final prehearing conference.

MYRON R. RENICK,
Presiding Officer.

Issued: June 25, 1976.

The Secretary shall serve a copy of this Notice upon all parties of record and shall publish this Notice in the FEDERAL REGISTER.

MYRON R. RENICK,
Presiding Officer.

[FR Doc.76-19062 Filed 6-29-76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

Public Hearing

Pursuant to Public Law 92-463, notice is hereby given of a public hearing to be held by the Office of Management and Budget under the provisions of the Federal Reports Act of 1942 (44 U.S.C. 3506).

The purpose of the hearing is for the Office of Management and Budget to determine whether or not the provisions for public reports and recordkeeping contained in the proposed "revision of memorandum of August 1975 about recordkeeping on student discipline procedures" are necessary to the proper performance of the Office of Civil Rights of the Department of Health, Education, and Welfare.

The hearing, to be held in Room 2010, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. on July 19, 1976, at 9:30 a.m., will be open to public observation and participation.

Further information regarding the meeting may be obtained from the Statistical Policy Division, Office of Management and Budget, Room 10201, New Executive Office Building, Washington, D.C. 20503, Telephone (202) 395-3772.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.76-18904 Filed 6-29-76;8:45 am]

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 June 23, 1976 (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 Office of Management and Budget, 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.

REVISIONS

DEPARTMENT OF JUSTICE

Departmental and Other, Financial Status Report, 7160/1LEAA, quarterly, grantees, Lowry, R. L., 395-3772.

DEPARTMENT OF LABOR

Bureau of Labor Statistics:
Information for the International Price Competitiveness Program Import Interview Form; International Commodity, Price Information, Import Commodity Information, BLS3007A, annually, U.S. importers, Strasser, A., 395-5867.
International Commodity Price Information, Export Price Information, BLS-2894A, annually, U.S. exporters, Strasser, A., 395-5867.

Employment Standards Administration:
Attending Physician's Supplementary Report, BEC 204, on occasion, treating physicians, Strasser, A., 395-5867.

EXTENSIONS

DEPARTMENT OF DEFENSE

Departmental and other, DMS Allotment Usage and Requirement Forecast, Format A, monthly, business firms producing hardware for DOD, Lowry, R. L., 395-3772.

DEPARTMENT OF LABOR

Employment and Training Administration, Employer Record—Contacts, Employer Record—Abridged (for State Employment Security Agencies), ES-330, on occasion, employers visited by employment service staff, Strasser, A., 395-5867.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-19032 Filed 6-29-76;8:45 am]

OHIO RIVER BASIN COMMISSION

MONONGAHELA RIVER BASIN WATER AND RELATED LAND STUDY

Issuance of Report and Environmental Impact Statement

Pursuant to section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89-80), the Ohio River Basin Commission has completed a Monongahela River Basin Water and Related Land Resources Study Report. The Report also serves as the Environmental Impact Statement, completed as required by section 102(2)(c), of the National Environmental Policy Act (Pub. L. 91-190).

Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Cincinnati, Ohio 45202.

FRED E. MORR,
Chairman.

[FR Doc.76-18924 Filed 6-29-76;8:45 am]

MUSKINGUM RIVER BASIN COMPREHENSIVE COORDINATED JOINT PLAN

Availability of Draft Report

Pursuant to section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89-80), the Ohio River Basin Commission has completed a draft report summarizing the current Comprehensive Coordinated Joint Plan (CCJP) for the Muskingum River Basin portion of the Ohio River Basin.

Views, comments and recommendations on the CCJP are requested by August 9, 1976. Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Cincinnati, Ohio 45202.

FRED E. MORR,
Chairman.

[FR Doc.76-18923 Filed 6-29-76;8:45 am]

POSTAL SERVICE

INCREASE IN CERTAIN TEMPORARY POSTAGE RATES

Effective Date

On September 18, 1975, the United States Postal Service requested the Postal Rate Commission to submit to the Governors of the Postal Service a recommended decision on changes in rates of postage and fees for postal services pursuant to chapter 36 of title 39, United States Code.

By notice published in the daily issue of the FEDERAL REGISTER on October 9, 1975, (40 FR 47589), the Postal Service announced that, should the Postal Rate Commission not transmit its recommended decision to the Governors of the Postal Service within 90 days after submission of the Postal Service's request (September 18, 1975), the Postal Service intended to place in effect specified temporary changes in rates of postage and fees for postal services under the authority of 39 U.S.C. 3641. Since new permanent rates will not be implemented prior to July 6, 1976, further temporary changes are to be implemented in rates for classes of mail or kinds of mailers referred to in 39 U.S.C. 3626.

Notice is hereby given that, effective 12:01 a.m. on July 6, 1976, the fifth step of phased postage rate increases will be placed in effect at temporary rate levels for the following classes of mail: second-class; controlled circulation; third-class bulk mail for qualified nonprofit organizations; special-rate fourth-class and library rate fourth-class. This action represents the next step of scheduled rate increases for the designated classifica-

tions of mail to be phased in over a period of 8 or 16 years, depending on the particular mail classification involved. The phasing period was extended to 8 and 16 years by Act of Congress effective June 30, 1974 (Pub. L. 93–328).

The rates of postage to be established, effective 12:01 a.m. on July 6, 1976, are set forth in column (3) of the schedule published below.

(39 U.S.C. 101(d), 401, 403, 404, 3621–3641; 84 Stat. 719.)

ROGER P. CRAIG,
Deputy General Counsel.

Schedule of phased postage rates, July 6, 1976

Mail class	Postage rate unit	Temporary rates (cents)
(1)	(2)	(3)
2d class:		
In county:		
Pound-rate matter	Pound	1.7
Per-piece charge	Piece	.5
Per-copy charge	Copy	1.6, 2.7
Outside county:		
Nonprofit:		
Nonadvertising	Pound	3.6
Advertising: [1]		
Zones:		
1 and 2	do	5.9
3	do	6.6
4	do	8.1
5	do	9.7
6	do	10.8
7	do	11.6
8	do	12.4
Per-piece charge	Piece	.8
Classroom:		
Nonadvertising	Pound	3.1
Advertising:		
Zones:		
1 and 2	do	4.0
3	do	4.7
4	do	5.9
5	do	7.7
6	do	9.6
7	do	10.8
8	do	12.6
Per-piece charge	Piece	.6
Regular rate:		
Nonadvertising	Pound	6.8
Advertising:		
Zones:		
1 and 2 (science of agriculture).	do	6.0
1 and 2	do	8.9
3	do	9.7
4	do	11.3
5	do	13.2
6	do	15.3
7	do	17.0
8	do	19.3
Per-piece charge [2]	Piece	2.1
Per-piece [3]	do	.8
Controlled circulation:		
Per pound	Pound	10.8
Minimum per piece	Piece	3.2
3d class:		
Nonprofit bulk rate:		
Circulars:		
Per pound	Pound	12.0
Minimum per piece	Piece	1.9
Book, catalogs, etc.:		
Per pound	Pound	10.0
Minimum per piece	Piece	1.9
4th class:		
Special rate:		
1st pound:		
Single piece	Pound	25.0
5-digit presort [4]	do	23.9
3-digit presort [5]	do	24.2
Each additional pound through 7 lb.	do	10.0
Each additional pound	do	8.0
Library rate:		
1st pound	do	9.0
Each additional pound	do	4.0

[1] Not applicable to publications containing 10 pt or less advertising content.
[2] Publications mailing 5,000 or more copies per issue outside county of publication.
[3] Publications mailing fewer than 5,000 copies per issue outside county of publication.
[4] See sec. 400.331a(1) of the classification schedule.
[5] See sec. 400.331a(2) of the classification schedule.

[FR Doc.76-18927 Filed 6-25-76;12:37 pm]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

MEETINGS

In accordance with Pub. L. 92–463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

SC–65 SHIP RADAR, WEDNESDAY, JULY 14, 1976

Notice of 48th Meeting; Wednesday, July 14, 1976—1:30 p.m.; Conference Room 8210, 2025 M Street, N.W., Washington, D.C.

Formal Meeting Schedule for SC–65 Working Groups. To be held at 2025 M Street, N.W., Washington, D.C.

Working group	Room	Date	Time
Reliability	8210	July 13	9:30 a.m.
Small small-boat radar	8210	July 13	1:30 p.m.
Collision avoidance	8210	July 14	9:30 a.m.

AGENDA

1. Call to Order; Chairman's Report; Adoption of Agenda.
2. Acceptance of SC–65 Summary Records; Appointment of Rappoteur.
3. Progress Reports of Working Groups: a. Reliability; b. Small Small Boat Radar; c. Collision Avoidance Systems.
4. Status Reports on Other Working Groups.
5. Final Approval of SC–65 Papers.
6. Other business.
7. Establishment of next meeting date.

Irwin Hurwitz, Chairman, SC–65, Federal Communications Commission, Washington, D.C. 20554. Phone: (202) 632–7197.

Special Committee No. 68, "Marine Radiotelephone Operator Education"; Notice of 16th Meeting; Wednesday, July 14, 1976—9:30 a.m.; Conference Room 3–205, 1229–20th Street, NW, Washington, D.C.

1. Call to Order; Chairman's Report.
2. Confirmation of Secretary; Adoption of Agenda.
3. Acceptance of SC–68 Summary Records.
4. Review pricing proposals for Handbook.
5. Review promotion plans for Handbook.
6. Review proposed feature stories.
7. New business.
8. Establishment of next meeting date.

A. Newell Garden, Chairman, SC–68, Raytheon Company, 141 Spring Street, Lexington, Mass. 02173. Phone: (617) 862–6600 (Ext. 414).

Executive Committee Meeting, Thursday, July 15, 1976.

The next Executive Committee Meeting will be on Thursday, July 15, 1976, at 10:00 a.m. in Conference Room 847, 1919 M Street, N.W., Washington, D.C.

AGENDA

1. Call to Order; Chairman's Report.
2. Introduction of Attendees; Adoption of Agenda.
3. Acceptance of the Minutes of Executive Committee Meetings.
4. Progress Reports on Currently Active Committees.
5. Status Reports on Other Committees.
6. New Membership Applications for Executive Committee Approval.
7. Approval of SC–69 Report to FCC.
8. Approval of SC–65 "Ship Radar" Papers.
9. Approval of Unit Pricing Schedule for Large Quantity MRT Orders.
10. Approval of 1977 Assembly Meeting Invitation from U.S. Power Squadrons.
11. Approval of 1979 Assembly Meeting Invitation from Northern California Marine Radio Council (NCMRC).
12. Discussion on Future Assembly Meetings.
13. Summary Reports and Announcements.
14. New Business.
15. Establishment of next meeting date.

To comply with the advance meeting notice requirements of Public Law 92–463, a comparatively long interval of time occurs between publication of this notice and the actual meetings. Consequently, there is no absolute certainty that the listed meeting room will be available on the day of the meeting. Those planning to attend any of the preceding listed meetings should report to the room listed in the notice. If a room substitution has been made, the new meeting room location will be posted at the room listed in this notice.

Agendas, working papers, and other appropriate documentation for each meeting are available at that meeting. Those desiring more specific information may contact either the designated Chairman or the RTCM Secretariat. (Phone: (202) 632–6490).

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. Problems are studied by Special Committees and the final reports are approved by the RTCM Executive Committee. All RTCM meetings are open to the public.

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

[FR Doc.76-18957 Filed 6-29-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 19539; 70–5874]

GENERAL PUBLIC UTILITIES CORP.

Acquisition of Interest in Automatic Remote Meter System

JUNE 22, 1976.

Notice is hereby given that General Public Utilities Corporation ("GPU"), 80 Pine Street, New York, New York 10005, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9(a)(1) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

GPU states that its owns certain patent rights and other technology ("technology") for an automatic remote meter reading system ("ARMR"). In connection with the development of the ARMR technology, GPU has employed the services of American Science and Engineering, Inc. ("AS&E"). The technology is presently being employed on an experimental basis under contracts among GPU, AS&E and utilities both affiliated and non-affiliated with GPU. As of April 30, 1976, GPU states that its investment in the technology amounted to $2,043,000.

GPU now proposes to sell the technology to AS&E for a consideration con-

sisting of: (1) A down payment of $2,300,000 in cash plus (2) quarterly additional payments equal to the sum of (i) 2.75 percent of all receipts derived by AS&E from certain aspects of its use of the technology (excluding, however, receipts from a contract between AS&E and Jersey Central Power & Light Company ("Jersey Central"), a GPU subsidiary) and (ii) 33⅓ percent of all royalties derived by AS&E and its subsidiaries from any licenses in respect of certain patent rights. The down payment is to be credited against the quarterly payments. GPU is to pay AS&E $30,000 as a contribution toward the cost of tools, masks or duplicate copies thereof pertaining to the performance of a contract with Jersey Central.

To the extent that GPU receives any payments from AS&E in respect of sales made by AS&E to any GPU subsidiary, an amount equal to such receipts will be contributed by GPU to such subsidiary. GPU will also make certain payments to individuals from whom GPU acquired patent rights in an aggregate amount of $800,000 out of the cash down payment received by GPU plus 33⅓ percent of any quarterly additional payments in excess of $1,000,000 received by GPU from AS&E.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment.

Notice is further given that any interested person may, not later than July 19, 1976, 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 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 upon the applicant 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, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from 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.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-18879 Filed 6-29-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09-5194]

MCA NEW VENTURES, INC.

Notice of Application for License as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.) has been filed by MCA New Ventures, Inc. (applicant) with the Small Business Administration pursuant to 13 C.F.R. 107.102 (1976).

The officers and directors are as follows:

F. Elliott Witt, 100 Universal City Plaza, Universal City, California 91608. Chairman of the Board and Chief Executive Officer, Secretary and Director.

Sidney Jay Sheinberg, 100 Universal City Plaza, Universal City, California 91608. President and Director.

Thomas Wertheimer, 100 Universal City Plaza, Universal City, California 91608. Vice President and Director.

Richard E. Baker, 100 Universal City Plaza, Universal City, California 91608. Treasurer.

Norbert A. Simmons, Suite 1100, Commerce Building, 821 Gravier Street, New Orleans, Louisiana 70112. Director.

Lew R. Wasserman, 100 Universal City Plaza, Universal City, California 91608. Director.

The applicant will maintain its principal place of business at 100 Universal City Plaza, Universal City, California 91608.

It will begin operations with $3,000,000 of paid-in capital derived from the sale of 3,000 shares of common stock at $1,000 per share to MCA, Inc., 100 Universal City Plaza, Universal City, California 91608.

MCA, Inc. is a diversified international company engaged primarily in production and distribution of theatrical motion pictures, television series and television feature length films, manufacture and distribution of phonograph records, tapes and other related activities.

The applicant will provide such financing and financial assistance to persons and businesses involved in entertainment or related or supporting industries. The applicant will finance producers and production companies engaged in the provision of technical and professional services which are part of or supportive to the entertainment industry. For example, MCA New Ventures may fund film productions, equipment rental operations, theatrical agencies, film laboratories, sound stages, recording studios and other entertainment-related businesses.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Any person may, on or before July 15, 1976, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Universal City, California.

(Catalog of Federal Domestic Assistance Program No. 59011, Small Business Investment Companies.)

Dated: June 23, 1976.

JAMES THOMAS PHELAN,
Deputy Associate Administrator for Investment.

[FR Doc.76-18937 Filed 6-29-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 82]

ASSIGNMENT OF HEARINGS

JUNE 24, 1976.

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.

AB 18 (Sub-No. 16), Chesapeake and Ohio Railway Company Abandonment Between Portion Ionia Branch Between Portland and Ionia, County, Michigan, now being assigned October 14, 1976 (2 days), at Portland, Michigan, in a hearing room to be later designated.

MC 116763 (Sub-No. 330), Carl Subler Trucking, Inc., now being assigned October 18, 1976 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 128273 (Sub-No. 214), Midwestern Distribution, Inc., now being assigned October 19, 1976 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC 129032 (Sub-No. 18), Tom Inman Trucking, Inc., now being assigned October 21, 1976 (2 days), at Chicago, Ill., in a hearing room to be later designated.

MC-F 12240, O.N.C. Freight Systems—Purchase (Portion)—Best Way Motor Freight now being assigned July 29, 1976 for continued hearing at the Office of the Interstate Commerce Commission in Washington, D.C.

MC-C 9027, Valdez Transfer, All-State Moving & Storage, Inc., And Colonial Moving & Inc.—Investigation of Operation and Practices, now being assigned September 16, 1976 (2 days), at Phoenix, Ariz., in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-18984 Filed 6-29-76;8:45 am]

[No. MC-C-9099]

MIAMI AND FORT LAUDERDALE AIR TERMINAL AREAS

Petition for Declaratory Order

Petitioners: BROWARD AIR-FREIGHT TERMINAL, INC. AND GREATER MIAMI AIR FREIGHT, INC. Petitioner's representative: James B. Curasi, Pestcoe and Payton, P. A., 511 Biscayne Building, 19 West Flagler Street, Miami, Fla. 33130.

By the instant petition, filed May 2, 1976, the above-named petitioners seek a declaratory order for clarification of the limits of the zone within which motor transportation of property when incidental to transportation by aircraft may be performed pursuant to section 203(b)(7a) of the Interstate Commerce Act to and from the Miami International Airport, Miami, Fla., and the Fort Lauderdale International Airport, Fort Lauderdale, Fla.

Petitioners state (1) that they hold certificates of public convenience and necessity Nos. MC-135163 and 134598 which authorize them to transport property between points in Dade, Broward, and Palm Beach Counties, Fla., (2) that numerous persons are providing service in competition to petitioners without authority from the Commission in reliance upon the exemption of section 203(b)(7a) of the Interstate Commerce Act, (3) that there is confusion as to the geographic scope of the exemption as it relates to the Miami and Fort Lauderdale airports, and (4) that the exemption should be limited to 25 miles from the respective airports.

Petitioners seek an order delineating the geographic territory within which operations may be conducted exempt from the Commission's economic regulation under section 203(b)(7a) and 49 CFR 1047.40 in regard to the exempt zone surrounding Miami International Airport near Miami, Fla., and the zone surrounding Fort Lauderdale International Airport near Fort Lauderdale, Fla., within which motor transportation of property is incidental to transportation by air.

No oral hearing is contemplated at this time but any interested person wishing to make representations in favor of or in opposition to the relief sought by the petition may do so by submitting written statements. All such persons, including motor carriers, air carriers, shippers and receivers of freight, and others, whether or not subject to the Commission's jurisdiction, are invited to submit representations setting forth any facts or argument pertinent to the proper scope of the exempt zone surrounding the Miami International Airport near Miami, Fla., and the Fort Lauderdale International Airport near Fort Lauderdale, Fla.

An original and 15 copies were possible of representations containing data, views, or arguments shall be filed with the Commisison on or before August 16, 1976. One copy of each representation should be served upon petitioner's representative shown above.

Written material or suggestions submitted will be available for public inspection at the Offices of the Interstate Commerce Commission, 12th and Constitution, Washington, D.C., during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-18980 Filed 6-29-76;8:45 am]

[Notice No. 78]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 24, 1976.

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 531 (Sub-No. 338TA), filed June 17, 1976. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, Tex. 77021. Applicant's representative: Wray E. Hughes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid soap or cleaning compounds*, in bulk, in tank vehicles, from Long Beach, Calif., to Elizabethton, Tenn., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Quad Chemical Corp., 2779 E. El Presidio, Long Beach, Calif. 90810. Send protests to: John Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk, 8610 Federal Bldg., Houston, Tex. 77002.

No. MC 2098 (Sub-No. 4TA), filed June 18, 1976. Applicant: MERLIN D. BRAMMER AND GALEN R. BRAMMER, doing business as BRAMMER TRUCK LINE, 308 North Ninth St., Sabetha, Kans. 66534. Applicant's representative: Erle W. Francis, Suite 719, 700 Kansas Ave., Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dust pollution control equipment*, from the plant facilities of MAC Equipment Inc., at or near Sabetha, Kans., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: MAC Equipment, Inc., P.O. Box 184, Sabetha, Kans. 66534. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 234 Federal Bldg., Topeka, Kans. 66603.

No. MC 36587 (Sub-No. 6TA), filed June 16, 1976. Applicant: HARRY J. PATTON AND CARLOS E. BREWER, doing business as PATTON TRUCKING CO., Box 7, Homer, Ill. 61849. Applicant's representative: Nolan C. Craver, Jr., 210 N. Broadway, Urbana, Ill. 61801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building brick*, from (a) Medina, Stark, Mahoning, Tuscarawas, Hocking, Holmes, Franklin, and Merian Counties, Ohio; (b) Jefferson County, Ky.; (c) Polk, Warren, Dallas, and Wapello Counties, Ind.; (d) Jackson, Greene, and Lake Counties, Ind.; and (e) St. Louis County, Mo., to points in Ford, Iroquois, Champaign, Vermilion, Piatt, Douglas, Edgar, Dewitt, and McLean Counties, Ill.; (2) *Sand and gravel*, in bags and bulk, from St. Louis, Jefferson, and Franklin Counties, Mo., to Ford, Iroquis, Champaign, Vermilion, Piatt, Douglas, Edgar, Dewitt, and McLean Counties, Ill.; and (3) *Gravel*, from Eau Claire, Chippewa, and Dunn Counties, Wis., to Champaign County, Ill., for 180 days. Supporting shippers: Champaign Builders Supply Co., Donald O. Blager, President, 30 E. John, Champaign, Ill. 61820, and Central Material Co. Howard E. Nielson, Sales Mgr., 25 E. Springfield, Champaign, Ill. 61820. Send protests to:

Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 51146(Sub-No. 467TA), filed June 18, 1976. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, P.O. Box 2298, Green Bay, Wis. 54304. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and closures*, from St. Louis, Mo., to Louisville, Ky., and Fort Wayne, and Evensville, Ind., and from Cincinnati, Ohio, to Indianapolis, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Continental Group, Inc., P.O. Box 41026, Cincinnati, Ohio 45241. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 108207 (Sub-No. 445TA), filed June 16, 1976. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz St., P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paint, liquid*, in vehicles equipped with mechanical refrigeration, from Springfield, Mo., to Tulsa, Okla.; and Grand Prairie and Fort Worth, Tex., for 180 days. Supporting shipper: Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minn. 55101. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 111401 (Sub-No. 465TA), filed June 16, 1976. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., Enid, Okla. 73701. Applicant's representative: Victor R. Comstock, P.O. Box 632, Enid, Okla. 73701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lubricating oil*, in bulk, from Kansas City, Kans., to points in Utah and Tennessee, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Phillips Petroleum Company, 154 Phillips Building Annex, Bartlesville, Okla. 74004. Send protests to: Janice Farmer, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 240 Old Post Office Bldg., 215 N.W. 3rd St., Oklahoma City, Okla. 73102.

No. MC 115278 (Sub-No. 3TA), filed June 16, 1976. Applicant: SIEGEL & COHEN EXPRESS, INC., 566 South 11 St., Newark, N.J. 07103. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Yarn*, in packages, from Henderson, N.C., to points in that part of the New York, N.Y. Commercial Zone, as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451 within which local operations may be conducted pursuant to the Partial Exemption of Section 203(b)(8) of the Act (The "Exempt" Zone) on the one hand, and, on the other, points in New Jersey, within 35 miles of New York, N.Y. restricted against interlining at origin or destination, for 180 days. Supporting shipper: Heritage Mills/Kenloft, William J. Wall. Send protests to: Robert S. H. Vance, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 115654 (Sub-No. 50TA), filed June 14, 1976. Applicant: TENNESSEE CARTAGE CO., INC., Candy Lane, P.O. Box 1193, Nashville, Tenn. 37202. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Boxed meats, frozen and fresh*, in vehicles equipped with mechanical refrigeration, from the facilities of Hernando Packing Company, a division of Glover, Inc., Memphis, Tenn., to points in Ohio and Kentucky. Restriction: Restricted to the transportation of traffic originating at the warehouse and storage facilities of Hernando Packing Company; and (2) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the warehouse and storage facilities of Mid-South Refrigerated Warehouse Co., Memphis, Tenn., to points in Alabama. Restriction: Restricted to the transportation of traffic originating at the warehouse and storage facilities of Mid-South Refrigerated Warehouse Co., for 180 days. Supporting shippers: Mid-South Refrigerated Warehouse Co., 1100 E. Parkway South, Memphis, Tenn. 38114, and Hernando Packing Co., Div. of Glover, Inc., 2800 Chelsea, Memphis, Tenn. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 116254 (Sub-No. 160TA), filed June 16, 1976. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, Ala. 35630. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dimethyl terephthalate and terephthalic acid*, in bulk, from the plantsite of Amoco Chemicals Corp., at or near Decatur, Ala., to the plantsite of ICI-America, Hopewell, Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Amoco Chemicals Corporation, 200 East Randolph Drive, Chicago, Ill. 60601. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 117344 (Sub-No. 252TA), filed June 15, 1976. Applicant: THE MAXWELL CO., 10380 Evendale Drive, P.O. Box 15010, Cincinnati, Ohio 45215. Applicant's representative: John C. Spencer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic liquid plastics*, in bulk, in tank vehicles, from Cincinnati, Ohio, to Ports of Entry on the United States-Canada Boundary Line, at or near Buffalo, Lewiston, and Rooseveltown, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days. of operating authority. Supporting shipper: Warren F. Brint, Plant Manager, E. I. DuPont de Nemours & Company, Brower Road, North Bend, Ohio 45052. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

No. MC 123407 (Sub-No. 310TA), filed June 17, 1976. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Highway 6, Valparaiso, Ind. 46383. Applicant's representative: Clifford J. Rice (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Panelling*, from the plantsite and warehouse facilities of Pan American Gyro-Tex Company, near Jacksonville, Fla, to points in Illinois, Indiana, Iowa, Kansas, Maryland, New York, Oklahoma, and Pennsylvania and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pan American Gyro-Tex Company, P.O. Box 26325, Imeson Airport, Jacksonville, Fla. 32218. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 West Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 124160 (Sub-No. 11TA), filed June 9, 1976. Applicant: SAVAGE BROTHERS, INCORPORATED, 585 South 500 East, American Fork, Utah 84003. Applicant's representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal mine rock dust*, in bulk, from the Keigley Quarry of U.S. Steel, at or near Santaquin, Utah, to the Somerset mine of U.S. Steel at or near Somerset (Gunnison County), Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: U.S. Steel Corporation, Western Area, 120 Montgomery St., San Francisco, Calif. 94106. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 125 South State St., Salt Lake City, Utah 84138.

No. MC 124711 (Sub-No. 38TA), filed June 14, 1976. Applicant: BECKER CORPORATION, P.O. Box 1050, 2643 West

Central, El Dorado, Kans. 67042. Applicant's representative: T. M. Brown, 223 Ciudad Bldg., Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solution, 10–34–0*, in bulk, in tank vehicles, (except petroleum products, from the facilities of Collingwood Grain, Inc., at or near Copeland, Kans., to points in Oklahoma, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Collingwood Grain, Inc., P.O. Box 728, Hutchinson, Kans. 67501. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 124887 (Sub-No. 26TA), filed June 16, 1976. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, Fla. 32421. Applicant's representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board, plywood accessories and materials* used in the installation and sale thereof, from the plantsite and warehouse site of Abitibi Corporation, in Lucas County, Ohio, to points in North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Alabama, Mississippi, and Florida, for 180 days. Supporting shipper: Abitibi Corporation, 3250 W. Big Beaver Road, Troy, Mich. 48084. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 126736 (Sub-No. 89TA), filed June 8, 1976. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 E. 21st St., P.O. Box 1559, Jacksonville, Fla. 32201. Applicant's representative: L. H. Blow (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfolane*, in bulk, in shripper or water carrier tank vehicles, from Norco, La., to Jacksonville, Fla., for subsequent export movement, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Shell Oil Company, P.O. Box 2099, Houston, Tex. 77001. Send protests to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 128030 (Sub-No. 107TA), filed June 9, 1976. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Urbana, Ill. 61801. Applicant's representative: R. C. Stout (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, between Evansville, Ind., and La Crosse, Wis., for 180 days. Supporting Shipper: G. Heileman Brewing Co., Inc., George Dahnke, Traffic Manager, 925 S. Third St., La Crosse, Wis. 54602. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 128246 (Sub-No. 14TA), filed June 15, 1976. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box A–D, Watsonville, Calif. 95076. Applicant's representative: Michael P. Groom, 500 The Swenson Bldg., 777 North 1st St., San Jose, Calif. 95112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and 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 Tempe, Ariz., to points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, Calif., under a continuing contract with Safeway Stores, Incorporated, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Safeway Stores, Incorporated, 5725 14th St., Oakland, Calif. 94660. Send protests to: Claud W. Reeves, District Supervisor, 450 Golden Gate Ave., Box 36004, San Francisco, Calif. 94102.

No. MC 128375 (Sub-No. 145TA), filed June 4, 1976. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Ken Adams (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles parts, accessories and related items;* (1) from North Kansas City, Mo., and its Commercial Zone, to points in Louisiana, Arkansas, Texas, Oklahoma and New Mexico; and (2) from Atlanta, Ga., and its Commercial Zone, to points in Arkansas, Texas, Oklahoma and New Mexico; and (3) from Dallas, Tex., and its Commercial Zone, to points in North Kansas City, Mo., and Atlanta, Ga., and their Commercial Zones. Restricted to transportation moving under a continuing contract with Maremont Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Arthur L. Comeau, General Traffic Manager, Maremont Corporation, 200 East Randolph Drive, Chicago, Ill. 60601. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Bldg., & Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 128449 (Sub-No. 6TA), filed June 17, 1976. Applicant: JAMES A. TUCKER, doing business as JIMMIE TUCKER TRUCKING, P.O. Box 428, Broken Bow, Okla. 74728. Applicant's representative: Rufus H. Lawson, 108 Bixler Bldg., 2400 Northwest 23rd St., Oklahoma City, Okla. 73107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips, wood shavings and sawdust*, from Mt. Pine and Dierks, Ark., to McCurtain County, Okla., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Weyerhaeuser Company, P.O. Box 1060, Hot Springs, Ark. 71901. Send protests to: Janice Farmer, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office and Courthouse, 215 Northwest 3rd St., Oklahoma City, Okla. 73102.

No. MC 128527 (Sub-No. 63TA), filed June 14, 1976. Applicant: MAY TRUCKING COMPANY, P.O. Box 398, Peyette, Idaho 83661. Applicant's representative: Edward G. Rawle (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum moulding, aluminum windows, aluminum vents, aluminum doors, aluminum siding, aluminum extrusions, aluminum coils, paste, paint, sealer adhesives, putty and glass*, between Elixir Industries plantsite and/or assembly points at/or near Gardena, Compton, Ontario, Sacramento, Hollister, City of Industry, Calif.; on the one hand, and, on the other, Meridian, Idaho, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Elixir Industries, P.O. Box 7986, Boise, Idaho 83707. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 550 West Fort, Box 07, Boise, Idaho 83724.

No. MC 128988 (Sub-No. 81TA), filed June 14, 1976. Applicant: JO/KEL, INC., 159 South Seventh Ave., P.O. Box 1249, City of Industry, Calif. 91749. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum rod*, from ConKelley, Mont., to Abingdon, Va.; Damacus, Va.; and Jefferson City, Mo.; (2) *Zirconium tubing*, from Albany, Oreg., to Blairsville, Pa.; (3) *Marine, industrial, and commercial gears, condensers, turbines, and related parts and accessories;* (a) from Sunnyvale, Calif., to Philadelphia, and Lester, Pa., and Buffalo, N.Y.; and (b) from Buffalo, N.Y., to Sunnvale, Calif.; and (4) *Steel forgings*, from Burnham, Pa., to Sunnyvale, Calif. Restrictions: Restricted against the transportation of commodities which by reason of size or weight require the use of special equipment and commodities in bulk, and further restricted to a transportation service to be performed under a continuing contract or contracts with Westinghouse Electric Corporation of Pittsburgh, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Westinghouse Electric Corporation, 290 Leger Road, North Huntingdon, Pa.

15642. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 129788 (Sub-No. 4TA), filed June 10, 1976. Applicant: NASS TRUCK LINES, INC., Box H, 31 East 5th Ave., Gary, Ind. 46402. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials*, from Evansville, Ind., and Newport, Ky., to Rockford, Ill., for 180 days. Supporting shippers: Lorden Distributing Co., Thomas Lorden, Owner, Rockford, Ill., and D'Agostin Distributing Co., Edward D'Agostin, President, 4617 Hydraulic Road, Rockford, Ill. Send protest to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 129788 (Sub-No. 5TA), filed June 10, 1976. Applicant: NASS TRUCK LINES, INC., Box H, 31 East 5th Ave., Gary, Ind. 46402. Applicant's representative: E. Stephen Heisley, Suite 805, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials*, from Evansville, Ind., to Peoria, Ill., for 180 days. Supporting shippers: Standard Wine & Liquor Co., Frank Mower, Owner, President, 1530 W. Altorser Lane, Peoria, Ill., and Heller Distributing Co., Lewis J. Heller, Owner, 1711 South West Adams St., Peoria, Ill. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 133219 (Sub-No. 20TA), filed June 10, 1976. Applicant: NEBRASKA BULK TRANSPORTS, INC., P.O. Box 215, Bennet, Nebr. 68317. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soybean oil*, from the plantsite of Cook Industries, Inc., located at or near Emporia, Kans., to North Kansas City, Mo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dean R. Kindney, Traffic Manager, Archer-Daniels-Midland Co., Inc., 78th & Thayer Sts., Lincoln, Nebr. 68507. Send protests to: Max Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Bldg., & U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 134806 (Sub-No. 38TA), filed June 16, 1976. Applicant: D-B-R TRANSPORT, INC., P.O. Box 813, Brattleboro, Vt. 05301. Applicant's representative: Francis J. Ortman, 7101 Wisconsin Ave., Suite 605, Washington, DC. 20014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Oils and greases, finishing compounds, and supplies* for tanning leather (except commodities in bulk), from points in Wisconsin and Illinois, to points in San Francisco, Alameda, Mapa, Solano, San Mateo, and Santa Cruz Counties, Calif., for 180 days. Supporting shipper: West Coast Tanners Production Club, 1099 Quesada Ave., San Francisco, Calif. 94124. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, Bureau of Operations, P.O. Box 548, 87 State St., Montpelier, Vt. 05602.

No. MC 135797 (Sub-No. 55TA), filed June 14, 1976. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell, Ark. 72745. Applicant's representative: Ralph B. Harlan, Suite 3, 204 Highway 71 North, Springdale, Ark. 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sporting goods and recreational equipment*, from the plantsite and warehouse facilities of Gym-Dandy, Inc., Bossier City, La., to points in Arizona, Arkansas, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, for 180 days. Supporting shipper: Gym-Dandy, Inc., P.O. Box 5637, Bossier City, La. 71010. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 135884 (Sub-No. 10TA), filed June 16, 1976. Applicant: STEVE CALDWELL, Route 1, Box 36, Adams, Oreg. 97810. Applicant's representative: Lawrence V. Smart, Jr., 419 W. 23rd Ave., Portland, Oreg. 97210. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Furniture parts*, from points in Umatilla and Deschutes Counties, Oreg., to points in Iowa, Pennsylvania, New Jersey, Georgia, Texas, Washington, California, and Arizona, under a continuing contract with Kerns RTF, Inc., for 180 days. Supporting shipper: Kerns RTF, Inc., 227 Southeast Byers, P.O. Box 1187, Pendleton, Oreg. 97801. Send protests to: W. J. Huetig, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 135982 (Sub-No. 12TA), filed June 14, 1976. Applicant: S. L. HARRIS, doing business as P.B.I., P.O. Box 7130, Longview, Tex. 75601. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, Tex. 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages;* and (2) *Empty containers;* (1) from Fort Worth, Tex., to Columbus, Meridian, Verona, Oxford, and Vicksburg, Miss., and (2) from Columbus, Meridian, Verona, Oxford, and Vicksburg, Miss., to Fort Worth, Tex., for 180 days. Supporting shippers: Prairie Distributing Co., 2101 Highway 82 East, Columbus, Miss. 39701. Magnolia Beverage Co., 2669 St. Andrew St., Meridian, Miss. 39301. Better Brands Distributing Co., 2005 Country Club Rd., Tupelo, Miss. and Rivertown Beverages, P.O. Box 389, Vicksburg, Miss. 39180. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 138991 (Sub-No. 12TA), filed June 15, 1976. Applicant: K. J. TRANSPORTATION, INC., P.O. Box 9764, Rochester, N.Y. 14623. Applicant's representative: S. Michael Richards, 44 North Ave., Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Beverages* (except malt beverages), from Columbus, Ohio, to points in New York on and west of U.S. Route 81, Pennsylvania, Illinois, Indiana, Kentucky, Maryland, Michigan, Virginia, and West Virginia; and from Granite City, Ill., to points in Indiana, Kansas, Kentucky, Missouri, Nebraska, and Tennessee; and (2) *Materials, supplies and equipment* used in the manufacture of such commodities, from the destination points listed in (1) above, to Columbus, Ohio, and Granite City, Ill., under a continuing contract with Shasta Beverages, for 180 days. Supporting shipper: Jack E. Saip, Traffic Manager, Shasta Beverages, P.O. Box 3390, Rincon Annex, San Francisco, Calif. 94119. Send protests to: Morris H. Gross, District Supervisor, Interstate Commerce Commission, Room 104, 301 Erie Blvd., West, Syracuse, N.Y. 13202.

No. MC 139139 (Sub-No. 38TA), filed June 9, 1976. Applicant: ROBERTS & OAKE, INC., 208 S. LaSalle St., Chicago, Ill. 60604. Applicant's representative: Jacob P. Billig, 2033 K St. NW., Washington, D.C. 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *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, from East St. Louis, National City, Ill., and St. Louis, Mo., to points in Indiana, Kentucky, and Ohio; and (2) from Cincinnati, Ohio, to points in Illinois, Indiana, Kentucky, Missouri and Ohio; and (3) *Such commodities* as are used by meat packers in the conduct of their business, from points in Illinois, Indiana, Kentucky, Missouri, and Ohio, to Cincinnati and from points in Indiana, Kentucky, and Ohio, to East St. Louis and National City, Ill., and St. Louis, Mo. Restriction: Restricted to traffic transported under contract with John Morrell & Co., and further restricted against the transportation of liquid commodities in bulk, for 180 days. Supporting shipper: John Morrell & Co., Dwight L. Helm, Distribution Co-

ordinator, 208 S. LaSalle 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 139733 (Sub-No. 3TA) filed June 16, 1976. Applicant: J. L. HUTCHISON, doing business as J. L. HUTCHISON TRUCKING, R.R. No. 3, Freeport, Ill. 61032. Applicant's representative: Fred H. Figge, 513 Lewis St., Burlington, Wis. 53105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain and/or feed storage bins*, with or without unloading augers, on flat bed trailers or grain trailers with removable sides from Milford, Ind., to points in Ogle, Stephenson, and Winnebago Counties, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Yeoman Equipment Sales, Jim Yeoman, Owner, P.O. Box 191, Dakota, Ill. 61018. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 139905 (Sub-No. 5TA), filed June 16, 1976. Applicant: R. B. STUCKY and N. M. STUCKY, doing business as S & S DAIRIES, Route 2, Moundridge, Kans. 67107. Applicant's representative: Clyde N. Christey, 514 Capitol Federal Bldg., 700 Kansas Ave., Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar*, from Rocky Ford, Colo., to Wichita, Kans., for 180 days. Supporting shippers: Wichita Coca Cola Bottling Co., Inc., P.O. Box 365, Wichita, Kans. 67201. American Crystal Sugar Company, 101 North Third St., Moorhead Minn. 56560. The Dr. Pepper Bottling Company, 2328 Southeast Blvd., Wichita, Kans. 67221, and Seavey & Flarsheim Brokerage Co., Division of Sales Force Companies, P.O. Box 1100, Wichita, Kans. 67201. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 141054 (Sub-No. 3TA), filed June 16, 1976. Applicant: B & B PACKING TRANSPORT, LTD., 4801 W. Collum Ave., Chicago, Ill. 60641. Applicant's representative: J. Michael May, Suite 400, 1447 Peachtree St. NE., Atlanta, Ga. 30309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat and packinghouses products*, from Chicago, Ill., to Hamden and Hartford, Conn., Dover, Del., Baltimore and Landover, Md., Boston, Simerville, Springfield, Westwood, and Worchester, Mass., Edison, Elizabeth, Florence, Newark, and South Kearny, N.J., Albany, Buffalo, Colonie, Elmsford, Elmira Heights, Garden City, Goshen, Mt. Kisco, New York, Oneida, Rochester, and Waterford, N.Y., Altoona, Erie, Philadelphia, Pittsburgh, and Scranton, Pa., and Providence, R.I., under a continuing contract with B & B Packing Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: B & B Packing Company, Edward V. Farrell, Vice President-Controller, 4801 W. Cullom Ave., Chicago, Ill. 60641. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 141255 (Sub-No. 4TA), filed June 8, 1976. Applicant: TANDY TRANSPORTATION, INC., 3501 Fairview, P.O. Box 7135, Fort Worth, Tex. 76111. Applicant's representative: Ralph W. Pulley, Jr., 4555 First National Bank Bldg., Dallas, Tex. 75202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electronic equipment, materials, and supplies*, from Seattle, Wash., to Fort Worth, Tex., Garden Grove, Calif., Groveport, Ohio, and Braintree, Mass.; (2) *Electronic equipment, materials, and supplies*, from Los Angeles, Calif., to Fort Worth, Tex., Groveport, Ohio, and Braintree, Mass.; (3) *Jute*, from San Diego, Calif., to Fort Worth, Tex.; and (4) *Pine Lumber*, from Burney, Calif., to Fort Worth, Tex. Restriction: The operations authorized herein in Paragraphs 1 through 4 are limited to a transportation service to be performed under a continuing contract or contracts with Tandy Corporation and Tandycrafts, Inc., of Fort Worth, Tex., and their subsidiary corporations, for 180 days. Supporting shippers: Tandy Corporation and Tandycrafts, Inc., 2727 W. 7th St., Fort Worth, Tex. 76107. Send protests to: H. C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 141255 (Sub-No. 5TA), filed June 8, 1976. Applicant: TANDY TRANSPORTATION, INC., 3501 Fairview, P.O. Box 7135, Fort Worth, Tex. 76111. Applicant's representative: Ralph W. Pulley, Jr., 4555 First National Bank Bldg., Dallas, Tex. 75202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Antenna masts*, from Tarrant City, Ala., to Groveport, Ohio; Braintree, Mass.; Detroit, Mich.; and Buffalo, N.Y.; (2) *Electronic stands KD*, from St. Louis, Mo., to Braintree, Mass.; (3) *Plastic rolls*, from New London, Wis., to Fort Worth, Tex.; (4) *Electronic equipment*, from Mundelein, Ill., to Braintree, Mass.; (5) *Electronic equipment and supplies*, from Palmer, Mass., to Fort Worth, Tex.; (6) *Speaker parts for electronic equipment*, from Grand Rapids, Mich., to Fort Worth, Tex.; (7) *Knitting yarn in skeins*, from Oregon, Ill., to Fort Worth, Tex.; (8) *Wood frames and parts for needlework*, from Chicago, Ill., to Fort Worth, Tex.; and (9) *Kits of linen or canvas, threads, tapestry, rug yarns, and artists materials*, from New York, N.Y., to Fort Worth, Tex. Restriction: The operations authorized herein in Paragraphs 1 through 9 above are limited to a transportation service to be performed under a continuing contract or contracts with Tandy Corporation and Tandycrafts, Inc., and their subsidiary corporations, for 180 days. Supporting shippers: Tandy Corporation and Tandycrafts, Inc., 2727 W. 7th St., Fort Worth, Tex. 76107. Send protests to: H. C. Morrison, Sr., District Supervisor, Interstate Commerce Commission, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 142148TA, filed June 11, 1976. Applicant: DONALD MUMMA, 7985 County Road 250, Salida, Colo. 81201. Applicant's representative: Richard P. Kissinger, Suite 140, 360 S. Monroe, Denver, Colo. 80209. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Zinc sulfate*, in bags, or in bulk, from the facilities of CoZinco, Inc., at or near Salida, Colo., to points in Iowa, Illinois, Nebraska, Kansas, Texas, Oklahoma, California, Oregon, Washington, and Utah; and (2) *Zinc skimmings*, from points in Nebraska, Texas, Utah, Iowa, Oklahoma, Missouri, Kansas, and Illinois, to the facilities of CoZinco, Inc., at or near Salida, Colo., under a continuing contract with CoZinco, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: CoZinco, Inc., P.O. Box 1005, Salida, Colo. 81201. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, Denver, Colo. 80202.

PASSENGER APPLICATION

No. MC 116313 (Sub-No. 5TA), filed June 18, 1976. Applicant: TROMBLY MOTOR COACH SERVICE, INC., Route 125, Bypass at Hillside Way, North Andover, Mass. 01845. Applicant's representative: Robert G. Bleakney, Jr., 100 Federal St., Boston, Mass 02110. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express and newspapers* in the same vehicle as passengers in regular-route operations, between Lawrence, Mass., and Boston, Mass., via Route 28, serving all intermediate points, said authority to be used in conjunction with its present regular-route authority between Manchester, N.H., and Lawrence, Mass. (MC 116313). Alternate route: Between Lawrence and Boston, Mass., from Lawrence via Route 28 to Interstate Highway 495, via I-495 to Interstate Highway 93, via I-93 to Boston. Applicant intends to interline with other carriers at Boston, Mass., and Manchester, N.H., for 180 days. Supporting shippers: There are approximately 25 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: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate

Commerce Commission, 150 Causeway St., Boston, Mass. 02114.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-18982 Filed 6-29-76;8:45 am]

[Notice No. 79]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 25, 1976.

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 2960 (Sub-No. 6TA), filed June 18, 1976. Applicant: ENGLAND TRANSPORTATION COMPANY OF TEXAS, P.O. Box 18333, Houston, Tex. 77023. Applicant's representative: E. Larry Wells, 4645 N. Central Expressway, Dallas, Tex. 75205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground clay*, from the plantsite of Dresser Industries, Inc., located, at or near Kosse, Tex., to the Port of Houston, Tex., restricted to traffic having a subsequent movement by water, for 180 days. Supporting shipper: Dresser Industries, Inc., P.O. Box 6504, Houston, Tex. 77005. Send protests to: John Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk, 8610 Federal Bldg., Houston, Tex. 77002.

No. MC 3246 (Sub-No. 19TA), filed June 14, 1976. Applicant: MASTERSON TRANSFER CO., INC., 3000 Pennsylvania Ave., West Extension, Warren, Pa. 16365. Applicant's representative: Kenneth T. Johnson, Bankers Trust Bldg., Jamestown, N.Y. 14701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic tool and mine bit boxes*, from the Village of Mayville (Chautauqua County), N.Y., to Madisonville, Ky., for 180 days. Supporting shipper: GTE Sylvania, 816 Lexington Ave., Warren, Pa. 16365. Send protests to: Richard C. Gobbell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 50069 (Sub-No. 512TA), filed June 16, 1976. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Ave., Oregon, Ohio 43616. Applicant's representative: Jack A. Gollan (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Industrial grades of asphalt and asphaltum*, in bulk, in tank vehicles, from Heath, Ohio, to Niles, Mich., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Byerlyte Company of Koppers Co., Inc., P.O. Box 2155, Heath, Ohio 43055. Send protests to: Keith D. Warner, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 69492 (Sub-No. 53TA), filed June 16, 1976. Applicant: HENRY EDWARDS, doing business as HENRY EDWARDS TRUCKING COMPANY, P.O. Box 97, Clinton, Ky. 42031. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, Tenn. 37215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising material;* (1) from St. Louis, Mo., to Memphis, Tenn.; (2) from Ft. Worth, Tex., to Memphis, Tenn.; (3) from Milwaukee, Wis., to Memphis, Tenn., and Jackson, Mo.; (4) from Detroit, Mich., to Jackson, Mo.; (5) from Belleville, Ill., to Martin, Tenn.; and Jackson, Mo.; and (6) from San Antonio, Tex., to Hopkinsville and Paducah, Ky., for 150 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: John M. Higgins, Hopkinsville Beverage Co., 1420 Cedar Ave., Hopkinsville, Ky. 42240. David T. Whitfield, Paducah Beer Dist., Inc., Rear 410, North 10th, Paducah, Ky. 42001. Milburn Vincent, Vincent Wholesale Dist., Co., Martin, Tenn. 38237. Leo A. Kohlfeld, Kohlfeld Dist., Inc., Rt. 3, Hwy 61 E, Jackson, Mo. 63755. P. R. Karnes, Jr., A. S. Barboro Dist., Co., 1311 Rayburn, Memphis, Tenn. 38106. Joseph G. Dreve, Premiums Brands, Inc., 2665 Summer Ave., Memphis, Tenn. Send protests to: Floyd A. Johnson, District Supervisor, Suite 2003, 100 North Main St., Memphis, Tenn. 38103.

No. MC 107496 (Sub-No. 1035TA), filed June 18, 1976. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid latex*, in bulk, from the 3M plantsite, at or near Chemolite, Minn., to the 3M plantsite, at or near Hartford City, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Minnesota Mining & Manufacturing Company, 3M Center, St. Paul, Minn. 55101. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 110563 (Sub-No. 182TA), filed June 17, 1976. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, 113 N. Ohio Ave., Ohio Bldg., Sidney, Ohio 45365. Applicant's representative: John L. Maurer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food, food products, and food ingredients* in mechanically refrigerated equipment (except in bulk), from the plant and warehouse facilities owned and operated by Archer Daniels Midland Company, located in Decatur, Ill., also, shipping products for Wilsey Foods, Inc., and others, to points in Colorado, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Archer Daniels Midland Company, P.O. Box 1470, Decatur, Ill. 62525. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 111053 (Sub-No. 4TA), filed June 18, 1976. Applicant: EHRLICK TRANSPORT, LTD., 3250 Derry Road, East, Mississauga, Ontario, Canada. Applicant's representative: William J. Hirsch, Suite 1125, 43 Court St., Buffalo, N.Y. 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Horses* (other than ordinary), and in the same vehicle with such horses, stable supplies and equipment used in the care and exhibition of such horses, mascots, and the personal effects of their attendants, trainers, and exhibitors, between all ports of entry on the International Boundary Line between the United States and Canada, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), restricted to traffic originating in

or destined to points in the Province of Manitoba, Canada, for 180 days. Supporting shippers: There are approximately 5 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: George M. Parker, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 910 Federal Bldg., 111 West Huron St., Buffalo, N.Y. 14202.

No. MC 111397 (Sub-No. 114TA), filed June 16, 1976. Applicant: DAVIS TRANSPORT, INC., 1345 South Fourth St., Paducah, Ky. 42001. Applicant's representative: H.S. Melton, Jr., P.O. Box 1407, Paducah, Ky. 42001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granulated slag*, in bulk and bags, between Memphis, Tenn., on the one hand, and on the other, points in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, Florida, and Oklahoma, for 180 days. Supporting shipper: David M. Steffen, Asst. Traffic Manager, H.B. Reed & Co., Inc., 8149 Kennedy Ave., Highland, Ind. 46322. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Suite 2006, 100 North Main St., Memphis, Tenn. 38103.

No. MC 114045 (Sub-No. 440TA), filed June 18, 1976. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, Tex. 75261. Applicant's representative: J.B. Stuart (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, in vehicles equipped with mechanical refrigeration, from Cincinnati, Ohio, to Phoenix, Ariz., for 180 days. Supporting shipper: Keebler Company, One Hollow Tree Lane, Elmhurst, Ill. 60126. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce St., Room 13C12, Dallas, Tex. 75242.

No. MC 115162 (Sub-No. 327TA), filed June 18, 1976. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert W. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition board*, from the plantsite of U.S. Plywood Division of Champion International Corporation, at Oxford, Miss., to points in Minnesota and Wisconsin, for 180 days. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, Ohio 45020. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala.

No. MC 116503 (Sub-No. 7TA, filed June 18, 1976. Applicant: B. R. SCHOOL & SONS, Inc., 2301 Fifth St., Perkasie, Pa. 18944. Applicant's representative: Harry J. Liederbach, 892 Second St. Pike, Richboro, Pa. 18954. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium chloride*, in bulk, in dump vehicles, from Solvay, N.Y., to points in Virginia, for 180 days. Supporting shipper: Allied Chemical Corporation, P.O. Box 1139R, Morristown, N.J. 07960. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 117344 (Sub.-No. 252TA), filed June 15, 1976. Applicant: THE MAXWELL CO., 10380 Evendale Drive, P.O. Box 15010, Cincinnati, Ohio 45215. Applicant's representative: John C. Spencer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic liquid plastics*, in bulk, in tank vehicles, from Cincinnati, Ohio, to the Ports of Entry on the United States-Canadian Boundary at or near Rooseveltown, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. F. Brady, Superintendent, Traffic & Shipping, The Upjohn Company, P.O. Box 687, LaPorte, Tex. 77571. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5514–B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

No. MC 118457 (Sub-No. 15TA), filed June 18, 1976. Applicant: ROBBINS DISTRIBUTING COMPANY, INC., 2430 Algoma Blvd., Oshkosh, Wis. 54901. Applicant's representative: Wm. C. Dineen, 710 Plankinton Ave., Milwaukee, Wis. 53203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese and butter*, from the plantsites of Schurman's Butter and Cheese, Inc., at Lancaster and Bloomington, Wis., to points in Michigan, Ohio, Indiana, and Illinois. Applicant intends to interline at Chicago, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Schurman's Butter & Cheese, Inc., 932 N. Madison St., Lancaster, Wis. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 118745 (Sub-No. 19TA), filed June 18, 1976. Applicant: JOHN PFROMMER, INC., P.O. Box 307, Douglassville, Pa. 19518. Applicant's representative: Theodore Polydoroff, 1250 Connecticut Ave. NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum coke*, in bulk, in dump vehicles, from Pualsboro, N.J., to the facilities of Lehigh Portland Cement, at or near Alsen, N.Y., under a continuing contract with I.M.C. Carbon Products, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: I.M.C. Carbon Products, 8 South Michigan Ave., Chicago, Ill. 60603. Send Protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 119118 (Sub-No. 51TA) filed June 17, 1976. Applicant: McCURDY TRUCKING, INC., P.O. Box 388, Latrobe, Pa. 15650. Applicant's representative: Lawrence C. Maston, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from Rochester, N.Y., to Atlantic City, N.J., *and empty malt beverage containers*, on return, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Harrison Beverage Company, Pleasantville, N.J. Send Protests to: Richard C. Gobbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 119665 (Sub-No. 4TA), filed June 8, 1976. Applicant: APD TRANSPORT CORP., 1 Railroad Place, Maspeth, N.Y. 11379. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed books*, from Bristol, Pa., to carrier's terminal in Maspeth, N.Y., and return shipments in the opposite direction. Applicant intends to tack its existing authority with MC 119665 to serve points within 50 miles in Connecticut, New York, and New Jersey, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Total Warehouse Services Corp., Farragut Ave., Bristol, Pa. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 119726 (Sub-No. 73TA), filed June 17, 1976. Applicant: N.A.B. TRUCKING CO., INC., 3220 Bluff Road, Indianapolis, Ind. 46217. Applicant's representative: James L. Beattey, 130 E. Washington St., Suite 1000, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground clay* (except in bulk and on flat-bed equipment), from the plantsite and warehouse facilities of the Oil-Dri Corporation of America, at or near Ochlocknee, Ga., to points in Kansas, Missouri, Minnesota, Iowa, Wisconsin, Florida, Illinois, Indiana, Michigan, Ohio, and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Oil-Dri Corporation of America, 520 North Michigan Ave., Chicago, Ill. 60611. Send protests to: William S. Ennis, Transportation Specialist, Interstate Commerce Commission, Federal Bldg., & U.S. Court-

house, 46 East Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 123255 (Sub-No. 74TA) (Correction), filed May 18, 1976, published in the FEDERAL REGISTER issue of June 10, 1976, republished as corrected this issue. Applicant: B MOTOR FREIGHT, INC., 140 Everett Ave., Newark, Ohio 43055. Applicant's representative: A. Charles Tell, 100 East Broad St., Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plumbers goods*, from Perrysville, Ohio, to points in Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mansfield Sanitary, Inc., Perrysville, Ohio 44864. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 200 Federal Bldg., & U.S. Courthouse, 85 Maroni Blvd., Columbus, Ohio 43215. The purpose of this republication is to add Michigan in lieu of Miami.

No. MC 126159 (Sub-No. 10TA), filed June 18, 1976. Applicant: ROC-SALT TRANSPORT, INC., W234 S5502 Big Bend Road, Waukesha, Wis. 53186. Applicant's representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, Wis. 53203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, in bulk and in packages, from the plantsite and loading facilities of Domtar Chemicals, Inc., Sifto Salt Division, at Milwaukee, Wis., to points in Illinois, Indiana, and the Lower Peninsula of Michigan, for 180 days. Supporting shipper: Domtar Chemicals, Inc., Sifto Salt Division, 9950 W. Lawrence Ave., Schiller Park, Ill. 60176. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 135 West Wells St., Room 807, Milwaukee, Wis. 53203.

No. MC 128527 (Sub-No. 63TA), filed June 14, 1976. Applicant: MAY TRUCKING CO., P.O. Box 398, Payette, Idaho 83661. Applicant's representative: Edward G. Rawle, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ferrous and non-ferrous scrap metals and junk batteries*, from Caldwell and Boise, Idaho, to Los Angeles, Fresno, Merced, and San Diego, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Metal & Scrap Co., 3rd and Railroad Ave., Caldwell, Idaho 83605. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 550 West Fort, Box 07, Boise, Idaho 83724.

No. MC 135082 (Sub-No. 30TA), filed June 18, 1976. Applicant: BURSCH TRUCKING, INC., doing business as ROADRUNNER TRUCKING, INC., P.O. Box 26748, 415 Rankin Road NE., Albuquerque, N. Mex. 87125. Applicant's representative: D. F. Jones, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, roofing products, supplies, and equipment* (except commodities the transportation of which because of their size and weight requires the use of special equipment and commodities in bulk, in tank vehicles), *and insulation materials* (except commodities, the transportation of which because of their size or weight requires the use of special equipment and commodities in bulk, in tank vehicles), from the plantsites of the Celotex Corporation, at Houston and San Antonio, Tex., to points in Arizona, Colorado, and New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Celotex Corporation, 1500 Dale Mabry Drive, Tampa, Fla. 33607. Send protests to: John H. Kirkemo, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Bldg., 517 Gold Ave. SW., Albuquerque, N. Mex. 87101.

No. MC 135797 (Sub-No. 56TA), filed June 18, 1976. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 200, Lowell Ark. 72745. Applicant's representative: Ralph B. Harlan, 204 Highway 71 North, Suite 3, Springdale, Ark. 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and pountry medicinal health products* (except in bulk), from Greenville, S.C., and Norwich, N.Y., to St. Louis, Mo.; South Haven, Miss.; and Lowell, Ark.; (2) *Animal and poultry feed supplements and components* (except in bulk), from Jacksonville, Fla., to points in and east of Texas, Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota; and (3) *Animal and poultry medicinal health* products, feed supplements and components (except in bulk), from St. Louis, Mo., and South Haven, Miss., to points in the United States (except Alaska and Hawaii). Restriction: (1), (2), and (3) restricted to traffic transported from and/or to Smith Kline Animal Health Products Division of Smith Kline Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Smith Kline Animal Health Products, Division of Smith Kline Corporation, Box 219, Lowell, Ark. 72745. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 136762 (Sub-No. 10TA), filed June 18, 1976. Applicant: OSBORNE HIGHWAY EXPRESS, 220 Erie St., Pomona, Calif. 91766. Applicant's representative: J. H. Gulseth, 125 University Ave., Berkeley, Calif. 94710. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulating material*, from Fruita, Colo., to points in Arizona, California, Idaho, Montana, Oregon, Nevada, New Mexico, Utah, Washington, and Wyoming, for 180 days. Supporting shipper: Fibreboard Corporation, 55 Francisco St., San Francisco, Calif. 94133. Send protests to: S. J. Rodriguez, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Ave., Box 36004, San Francisco, Calif. 94102.

No. MC 139893 (Sub-No. 4TA), filed June 18, 1976. Applicant: THAMES VALLEY BRICK & BUILDING PRODUCTS LIMITED, P.O. Box 314, Chatham, Ontario, Canada. Applicant's representative: Jeremy Kahn, Suite 733, Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rough and dressed lumber and plywood*, from Ports of Entry on the United States-Canada International Boundary Line, located in Michigan and New York, to points in Illinois, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin, and the District of Columbia. Restrictions: (1) The authority granted herein is restricted to shipments in foreign commerce; and (2) The authority granted herein is restricted to shipments originating at the facilities of Green Forest Lumber Limited, at or near Chatham, Ontario, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Green Forest Lumber Limited, Sales Supervisor, James Oglivie, 250 Merton St., Toronto, Ontario, Canada. Send protests to: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 140176 (Sub-No. 3TA), filed June 16, 1976. Applicant: RILEY WAYNE POWELL, doing business as POWELL TRUCKING COMPANY, Route 3, Sumrall, Miss. 39482. Applicant's representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, Miss. 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Poles and piling*, from the facilities of Davie Timber Company, Inc., Hattiesburg, Miss., to points in Colorado, Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, Pennsylvania, Vermont, and Wisconsin, under a continuing contract with Davis Timber Company, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Davis Timber Company, Inc., P.O. Box 1591, Hattiesburg, Miss. 39402. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Bldg., Jackson, Miss. 39201.

No. MC 141990 (Sub-No. 1TA) (Correction), filed May 27, 1976, published in the

FEDERAL REGISTER issue of June 14, 1976, republished as corrected this issue. Applicant: G & L TRUCKING AND LEASING CO., Gibson Road, S.E., Camden, Ark. 71701. Applicant's representative: Julian D. Streett, 139 Jackson St., Camden, Ark. 71701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock, clay, dirt, gravel, wash gravel, and sand*, in bulk, from points in Calhoun and Columbia Counties, Ark., to East Carroll, West Carroll, Morehouse, Union, Clairborne, Webster, Bossier, Caddo, De Soto, Red River, Benville, Lincoln, Ouachita, Richland and Madison Parishes, La., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Triangle Gravel Co., Inc., P.O. Box 4430, Monroe, La. 71201. Send protests to: William H. Land, Jr., District Supervisor, Interstate Commerce Commission, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201. The purpose of this republication is to correct the territorial description.

No. MC 142129 (Sub-No. 1TA), filed June 16, 1976. Applicant: VALLEY PARCEL SERVICE, INC., 500 South Teilman Ave., Fresno, Calif. 93726. Applicant's representative: Rodney Darrell Heintz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Fresno Airport, on the one hand, and, on the other, points in Fresno, Kings, Tulare, Madera, and Merced Counties, Calif., restricted to traffic having a prior or subsequent out of state movement by air, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Emery Air Freight Corporation, 501 S. Airport Blvd., S. San Francisco, Calif. 94080, and C F Air Freight, Inc., 3055 Clearview Way—Suite 310, San Mateo, Calif. 94402. Send protests to: Claud W. Reeves, District Supervisor, 450 Golden Gate Ave., Box 36004, San Francisco, Calif. 94102.

No. MC 142132 (Sub-No. 1TA), filed June 18, 1976. Applicant: T. J. KERVIN, P.O. Box 48, Winnfield, La. 71483. Applican't representative: T. J. Kervin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood sawdust, chips, and shavings* (wood residuals), from Winnfield, La., to Corrigan, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Olinkraft, Inc., P.O. Box 488, West Monroe, La. 71291. Send protests to: Ray C. Armstrong, Jr., District Supervisor, 701 Loyola Ave., 9038 U.S. Postal Service Bldg., New Orleans, La. 70113.

No. MC 142149 (Sub-No. 1TA), filed June 14, 1976. Applicant: WASTE MANAGEMENT, INC., doing business as SOUTHERN SANITATION SERVICE, 2300 West Commercial Blvd., Fort Lauderdale, Fla. 33309. Applicant's representative: John P. Bond, 2766 Douglas Road, Miami, Fla. 33133. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal consisting of lead and copper together wi h waste materials*, loose, between points in Florida, all shipments having a subsequent movement by motor carrier in interstate commerce, under a continuing contract with Southern Bell Telephone and Telegraph Company. Applicant intends to interline with other carriers at 2800 N.W. 48th St., Pompano Beach, Fla., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southern Bell Telephone and Telegraph Company, 6451 North Federal Highway, Room 1015, Fort Lauderdale, Fla. 33308. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 142150 TA, filed June 15, 1976. Applicant: ONLY WAY, INC., P.O. Box 248, Duraty, Calif. 91010. Applicant's representative: Frederick J. Coffman, 521 South 14th St., P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and frozen vegetables*, from Bellingham, La Conner, and Everson, Wash., to points in Arizona, California, Nevada, and Utah, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: San Juan Packers, Inc., P.O. Box 487, Bellingham, Wash. 98225. Send protests to: Philip Yallowitz, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 141550 (Sub-No. 1TA), filed June 17, 1976. Applicant: HOPPY LINES, INC., 420 Devonshire Drive, Brea, Calif. 92621. Applicant's representative: Kenneth F. Dudley, 611 Church St., P.O. Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chlorinated paraffin*, in packages and containers, from Anaheim and Santa Fe Springs, Calif., to points in Colorado, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Washington, and Wisconsin; and (2) *Coal tar or petroleum resin*, in packages and containers, from Neville Island, Pa., to points in California, under a continuing contract with Neville Chemical Co., for 180 days. Supporting shipper: Neville Chemical Co., Neville Island, Pittsburgh, Pa. 15225. Send protests to: Philip Yallowitz, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1321, Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142151 TA, filed June 9, 1976. Applicant: H.E.R. EXPRESS, INC., Building 2142, Miami International Airport Depot, Miami, Fla. 33148. Applicant's representative: John P. Bond, 2766 Douglas Road, Miami, Fla. 33133. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except articles which because of size or weight require special handling and special equipment; Classes A and B explosives; commodities requiring refrigeration; household goods, livestock; and commodities in bulk), between points in Dade County, Fla., all shipments having a prior or subsequent movement by water, for 180 days. Supporting shippers: There are approximately 17 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: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Monterey Bldg., Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 142152 TA, filed June 14, 1976. Applicant: N.A.T. TRANSPORTATION, INC., 229 North Main St., Bradner, Ohio 43406. Applicant's representative: Robert J. Gill, 29 South LaSalle St., Chicago, Ill. 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a)(1) *Machinery and equipment* for installation in industrial, residential, commercial and marine construction projects used for heating, cooling, air conditioning, ventilating, humidifying, dehumidifying, pollution control, and movement of air and other gases; (2) *Parts, materials*, equipment and supplies used in the manufacture, distribution, installation, or operation of the items named in (1) above; (3) *Refused, rejected, obsolete, and returned commodities* described in (1) and (2) above; and (b)(1) Commodities in (1), (2) and (3) of Exhibit 1 between Waldron, Mich., and Bradner, Ohio, on the one hand, and, on the other, all points in the United States; and (2) Commodities in (2) of Exhibit 1 between Waldren, Mich., Bradner, and Toledo, Ohio, on the one hand, and, on the other, Waldron, Mich., Bradner, and Toledo, Ohio, under a continuing contract with American Warming and Ventilating, Inc., for 180 days. Supporting shipper: American Warming and Ventilating, Inc., 1017 Summit St., Toledo, Ohio 43603. Send protests to: Keith D. Warner, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 142153 TA, filed May 28, 1976. Applicant: DANNERS INCORPORATED, 102 Bedford St., Houston, Tex. 77012. Applicant's representative: John W. Carlisle, 609 Fannin Bldg., Suite 300,

Houston, Tex. 77002. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Engine or motor parts and equipment and parts thereof* used on ships and ocean going vessels for the operation, maintenance, and safety of such ships and vessels, from (1) Intercontinental Airport, Houston, Tex.; Gulfport-Biloxi, Municipal Airport, Gulfport-Biloxi, Miss.; Ryan Airport, Baton Rouge, La.; Greenville Municipal Airport, Greenville, Miss.; Rio Grande Valley Airport, Brownsville, Tex.; Moisant Airport, Metairie, Louisiana; Corpus Christi International Airport, Corpus Christi, Tex.; Lake Charles Municipal Airport, Lake Charles, La.; Jefferson County Airport, Beaumont, Tex.; and Scholes Field, Galveston, Tex.; To: The following Gulf Ports; Houston Navigation District, Baytown-LaPorte, Galveston, Corpus Christi, Port Lavaca, Orange, Brownsville, Port Arthur, Beaumont, Freeport, Port Neches, and Texas City, Tex.; Lake Charles, Baton Rouge, and New Orleans, La.; Gulfport, Biloxi, Pascagoula, and Greenville, Miss.; and (2) between the Gulf Ports named in (1) above. Restrictions: Restricted to pick-up and delivery service at the airports named above and at port facilities at or near the Gulf Ports named, and further restricted to 24 hour on call, on demand with pick-up and delivery service being performed within 18 hours of receiving a request for service. Transportation in (2) above is restricted to pick-up and delivery services at port facilities at or near the Gulf Ports named above, 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 F. Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk, Room 8610, Houston, Tex. 77002.

No. MC 142154 TA, filed June 16, 1976. Applicant: ROBERT H. CROWELL AND JAMES R. CROWELL, doing business as CROWELL MOTOR LINE, Columbia Highway, Franklin, Tenn. 37064. Applicant's representative: Robert L. Baker, Suite 618 Hamilton Bank Bldg., Nashville, Tenn. 37219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electric motors, electric welders, and parts and accessories thereof; welding supplies and hand truck parts* (except commodities in bulk and commodities which by reason of size or weight require the use of special equipment), from Cuyahoga County, Ohio, to points in Davidson, Cheatham, Maury, and Hamilton Counties, Tenn., and Jefferson County, Ala., under a continuing contract with The Lincoln Electric Company, for 180 days. Supporting shipper: The Lincoln Electric Company, 22801 St. Clair Ave., Cleveland, Ohio 44117. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 142158 TA, filed June 18, 1976. Applicant: REGLIN AND HESCH TRUCKING AND EXCAVATING, Route 1, Alma, Wis. 54610. Applicant's representative: C. E. DeBruyn, 1745 University Ave., St. Paul, Minn. 55104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel, and dirt*, in bulk, in dump trucks, from Wabasha, Minn., to points in Buffalo, Pepin, and Trempealeau Counties, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Wabasha Sand and Gravel Co., Wabasha, Minn. 55981, and Independence Ready Mix, Inc., Independence, Wis. 54747. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bld., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 142160 TA, filed June 18, 1976. Applicant: DELVE SWAN TRUCKING COMPANY, INC., Highway 11 North, P.O. Box 693, Purvis, Miss. 39475. Applicant's representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, Miss. 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, (1) from the plantsite of Purvis Hardwood Lumber Company, Inc., Bogalusa, La., to the plantsite of Purvis Hardwood Lumber Company, Inc., Purvis, Miss.; and (2) from the plantsite of Purvis Hardwood Lumber Company, Inc., Purvis, Miss., to points in Arkansas, Alabama, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin, under a continuing contract with Purvis Hardwood Lumber Company, Inc., for 180 days. Supporting shipper: Purvis Hardwood Lumber, Inc., P.O. Box 266, Purvis, Miss. 39475. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Bldg., Jackson, Miss. 39201.

PASSENGER APPLICATION

No. MC 142159 TA, filed June 17, 1976. Applicant: BARKER BUS SERVICE, INC., 8676 Olive St. Road, University City, Mo. 63132. Applicant's representative: Philip R. Newmark, 1015 Locust St., St. Louis, Mo. 63101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage and oil samples*, in the same vehicle, between Scott Air Force Base, Illinois and St. Louis International Airport, St. Louis, Mo., under a continuing contract with U.S. Air Force, Hqs, MAC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: U.S. Air Force, Hqs., MAC, Scott Air Force Base, Ill. 62265. Send protests to: J. P. Werthamm, District Supervisor, Interstate Commerce Commission, 210 N. 12th St., Room 1465, St. Louis, Mo. 63101.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-18983 Filed 6-29-76;8:45 am]

[Drought Order No. 70]

MINNESOTA, ET AL.

Drought Relief

In the matter of relief under section 22 of the Interstate Commerce Act; Present: Charles L. Clapp, Vice Chairman, to whom the above entitled matter has been assigned for action thereon.

It appearing, that by reasons of drought conditions existing in certain portions of the States of Minnesota, South Dakota and Wisconsin, hereinafter referred to as the disaster area, the Governor of Minnesota and the Assistant Secretary of the United States Department of Agriculture have requested the Commission to enter an order under Section 22 of the Interstate Commerce Act authorizing railroads subject to the Commission's jurisdiction to transport hay to the disaster area at reduced rates:

It is ordered, That carriers by railroad participating in the Transportation of hay to the following counties:

Becker	Morrison
Beltrami	Murray
Benton	Otter Tail
Big Stone	Pennington
Cass	Pipestone
Chippewa	Polk
Clay	Pope
Clearwater	Red Lake
Crow Wing	Redwood
Douglas	Renville
Grant	Sherburne
Hubbard	Stearns
Kandiyohi	Stevens
Lac qui Parle	Swift
Lincoln	Todd
Lyon	Traverse
Mahnomen	Wadena
Marshall	Wilkin
McLeod	Wright
Norman	Yellow Medicine

all located in the State of Minnesota:

Aurora	Jackson
Beadle	Jerauld
Bon Homme	Jones
Brookings	Kingsbury
Brown	Lake
Brule	Lincoln
Buffalo	Lyman
Campbell	McCook
Charles Mix	McPherson
Clark	Marshall
Codington	Mellette
Corson	Miner
Davison	Minnehaha
Day	Moody
Deuel	Potter
Dewey	Roberts
Douglas	Sanborn
Edmunds	Shannon
Faulk	Spink
Grant	Stanley
Gregory	Sully
Haakon	Todd
Hamlin	Tripp
Hand	Turner
Hanson	Walworth
Hughes	Washabaugh
Hutchinson	Yankton
Hyde	Zeibach

all located in the State of South Dakota; and

Ashland	Pepin
Barron	Pierce
Bayfield	Polk
Burnett	Price
Chippewa	Rusk
Douglas	Sawyer
Dunn	St. Croix
Eau Claire	Taylor
Iron	Washburn

located in the State of Wisconsin, hereinafter referred to as the disaster area, be, and they are hereby, authorized under section 22 of the Interstate Commerce Act to establish and maintain until August 31, 1976, reduced rates for such transportation, the rates to be published and filed in the manner prescribed in section 6 of the Interstate Commerce Act except that they may be effective upon one day's notice to the Commission and the public.

It is further ordered, That the class of persons entitled to such reduced rates is hereby defined as persons designated as being in distress and in need of relief by the United States Department of Agriculture or by such State agents or agencies as may in turn be designated by the United States Department of Agriculture to assist in relieving the distress caused by the drought.

It is further ordered, That, during the period in which any reduced rates authorized by this order are effective the carriers may, notwithstanding the provisions of Section 4 of the Interstate Commerce Act, maintain higher rates to directly intermediate points and maintain through rates in excess of the aggregate of intermediate rates over the same routes if one or more of the factors of such aggregrate of intermediate rates is a reduced rate established under the authority of this order.

It is further ordered, That any tariffs or tariff provisions published under the authority of this order shall explicitly so state, making reference to this order by number and date.

And it is further ordered, That subject to the conditions in the succeeding paragraphs hereof, the use of reduced rates established by authority of this order may be conditioned upon the release by the shipper of the value of the commodity, which released value, in its relation to the invoice value of the property at time of shipment, shall be in the same percentage relation which the reduced rates bear to the rates which otherwise would apply.

And it is further ordered, That tariffs containing released rates filed under authority of this order shall show in connection with such rates the following notation:

The released value must be entered on shipping order and bill of lading in the following form:

The agreed or declared value of the property is hereby specifically stated by the shipper to be not in excess of (show percent) of the invoice value of the property herein described.

If the shipper fails or declines to execute the above statement, shipments will not be accepted for transportation at the rates subject hereto. Rates published elsewhere in other tariffs lawfully filed with the Interstate Commerce Commission will apply in such a case. Rates herein published on released value have been authorized by the Interstate Commerce Commission in Drought Order No. 70 of June 25, 1976.

And it is further ordered, That notice to the affected railroads and the general public shall be given by depositing a copy of this order in the Office of the Secretary of the Commission and by filing a copy with the Director, Office of the Federal Register; and that copies be mailed to the Chairman of the Traffic Executive Association-Eastern Railroads, New York, New York; the Chairman of the Southern Freight Association, Atlanta, Georgia; the Chairman of the Executive Committee, Western Railroads Traffic Association, Chicago, Illinois; the Vice President, Economics and Finance Department, Association of American Railroads, Washington, D.C.; and to the President of the American Short Line Railroad Association, Washington, D.C.

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.

Dated at Washington, D.C., this 25th day of June, 1976.

By the Commission, Vice Chairman Clapp.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-18985 Filed 6-29-76;8:45 am]

[No. MC-C-8973]

DAILY EXPRESS, INC.

Transportation of Empty Intermodal Cargo Containers

JUNE 25, 1976.

Petitioner: Daily Express, Inc.; Petitioner's Representatives: William A. Chesnutt, James W. Hagar, 1776 F Street NW., Washington, D.C. 20006.

By petition filed June 2, 1976, Daily Express, Inc., seeks a ruling that the motor carrier transportation, between points in a single State, of certain empty containers (as defined in Article I of the United States Customs Convention on Containers), having had a prior movement in maritime operations (loaded with freight) and assertedly having a later subsequent movement in maritime operations is transportation in interstate or foreign commerce subject to regulation by the Interstate Commerce Commission, and not transportation in intrastate commerce.

It is noted that the Interstate Commerce Commission has declared a policy of fostering the development of intermodal maritime-land operations. This policy has been affirmatively implemented by issuance of motor common carrier certificates authorizing the transportation of general commodities in containers. Other arms of the Federal government have acted to facilitate the growth and development of intermodal maritime-land transportation of containerized traffic. By Executive Order No. 11459, of March 7, 1969, the Secretary of Transportation was designated:

to take all actions . . . to carry out in the most effective manner the approval and certification of containers and vehicles for international transport of goods under customs seal pursuant to . . . the Customs Convention of Containers, done at Geneva on May 18, 1956 (TIAS 6634). . . .

Pursuant to the aforementioned Convention, "containers" (as defined in Article 1(b) therein) are granted temporary admission to the United States and other signatory countries free of import duties, import taxes, and other import prohibitions, provided they are exported within 3 months of importation. Containers sometime move from the point of emptying directly to the point of loading for further intermodal movement. Often, however, these containers are moved to a storage site, or moved between storage sites, before being moved to a shipper for reloading. It is these latter movements, to, between, or from storage sites, when occurring between points in a single State, that are the subject of this petition.

Petitioner holds authority to transport empty used containers, used trailers, and used chassis, in interstate or foreign commerce, between points in the 48 contiguous United States. Petitioner seeks a determination that the motor carrier movements within a single State of empty containers, subject to the above-noted Customs Convention, are movements in interstate or foreign commerce, and, therefore, within the jurisdiction of the Interstate Commerce Commission. Petitioner asserts that inasmuch as these above-noted single-State movements to, between, or from storage sites, represent placement, temporary shifting, and repositioning, they are distinct and isolated segments of a "continuum of movement," which ultimately contemplates re-exportation of the containers, either loaded or empty, within 3 months of their importation, and, therefore, does not constitute an intrastate movement outside the regulatory jurisdiction of the Commission.

Petitioner further asserts that a determination that these single-State movements of intermodal cargo containers are intrastate in nature would raise questions of conflicting and inconsistent regulation. To substantiate this contention, petitioner compares the regulation set forth in 49 CFR 1041.10, Return of Containers and Other Shipping Devices, which, petitioner submits, allows a motor carrier authorized to transport loaded containers to return the empty containers from the inland unloading point to the port of entry the loaded container passed through, regardless of whether the two points are in the same State.

In Air-Land Transport, Inc., Com. Car. Applic., 120 M.C.C. 530 (1974), the Commission, Appellate Division 1, found that the proposed motor carrier transportation of empty containers, between points in three counties in the State of Wash-

ington was in intrastate commerce, and, accordingly, did not fall within the ambit of its regulatory jurisdiction.[1] Petitioner asserts that this case can be distinguished from the operations which are the subject of the instant petition, inasmuch as the "containers" defined by the United Nations Customs Convention are employed in relatively continuous, cyclical use, in the furtherance of foreign commerce, and remain in a single country for a period of no more than 3 months under penalty of having import duties assessed against them. Nothing in the *Air-Land* case, petitioner alleges, suggests that the container traffic considered therein came under the terms of the Customs Convention.

Petitioner requests a formal ruling of this Commission as to whether the subject motor carrier transportation of empty cargo containers moving in the manner described by the petitioner between points in a single State constitutes transportation in interstate or foreign commerce, and, thus, is transportation falling within this Commission's regulatory jurisdiction. Petitioner states that the ruling requested will not have a significant adverse effect on the quality of the human environment.

No oral hearing is contemplated at this time, but any person (including petitioner) desiring to participate in this proceeding shall file an original and fifteen (15) copies of written representations, views, or arguments in the matter, with the Commission, on or before August 18, 1976. A copy of each representation shall be filed on petitioner's representatives. Written material or suggestions submitted will be available for public inspection at the Offices of the Interstate Commerce Commission, 12th and Constitution Ave., Washington, D.C., during regular business hours. Notice to the general public of the matters herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–18987 Filed 6–29–76;8:45 am]

[1] These containers originally were loaded and had experienced a prior movement in maritime operations to Seattle, Wash., and thence moved by motor carrier service to consignees in that same State, where they were unloaded. It was the subsequent movement of these then-empty containers from the said Washington consignees to points in a three-county area in Washington for which operating authority was sought, and as to which the above-noted finding was made.

federal register

WEDNESDAY, JUNE 30, 1976



PART II:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

■

HEALTH INSURANCE PROGRAM

Schedule of Limits on Hospital Inpatient General Routine Service Costs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

HEALTH INSURANCE PROGRAM

Schedule of Limits on Hospital Inpatient General Routine Service Costs

On May 4, 1976, there was published in the FEDERAL REGISTER (41 FR 18465) a Notice of Proposed Schedule of Limits on Hospital Inpatient General Routine Service Costs for Hospitals with Cost Reporting Periods Beginning on or After July 1, 1976. Section 1861(v)(1) of the Social Security Act, as amended, permits the Secretary of Health, Education, and Welfare to set prospective limits on direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services furnished by a provider, to be recognized as reasonable based on estimates of the cost necessary in the efficient delivery of needed health services. The revised Schedule of Limits, initially proposed by publication in the FEDERAL REGISTER on May 4, 1976 (41 FR 18465), revises the Schedule of Limits on Hospital Inpatient General Routine Services Costs for cost reporting periods beginning on or after July 1, 1975, as published in the FEDERAL REGISTER on May 30, 1975 (40 FR 23622), and is applicable to cost reporting periods beginning on or after July 1, 1976, and until the effective date of a revised schedule.

A refinement has been made in the revised schedule of limits to be effective July 1, 1976. The refinement is the result of changes in the size of units of economic environment, used for the classification proposed herein, which were developed by the Office of Management and Budget (OMB) to recognize the existence of continuously developed high density population areas which are larger than an individual Standard Metropolitan Statistical Area (SMSA). Use of the new unit, the Standard Consolidated Statistical Area (SCSA), will give a better cost comparison among providers in contiguous SMSA's that are part of an integrated economic area.

OMB has designated 13 areas containing one-third of the total population of the United States as SCSA's. The SCSA concept associates contiguous SMSA's between which a significant degree of economic interaction exists. Each of the new consolidated areas includes a smaller Standard Metropolitan Statistical Area with a population of at least one million, plus one or more adjoining SMSA's related to it by continuously developed high density population corridors and metropolitan commuting of workers. The SCSA's are: Chicago-Gary, New York-Newark-Jersey City, Boston-Lawrence-Lowell, Cincinnati-Hamilton, Cleveland-Akron-Lorain, Detroit-Ann Arbor, Houston-Galveston, Los Angeles-Long Beach-Anaheim, Miami-Fort Lauderdale, Milwaukee-Racine, Philadelphia-Wilmington-Trenton, San Francisco-Oakland-San Jose, and Seattle-Tacoma. The SCSA will be used to classify all providers in the SCSA without regard to the boundaries of individual SMSA's contained in the SCSA. The SCSA's were ranked based on their overall average per capital income.

The revised schedule of limits has also been modified to include a provision to protect providers, for a one year period, from the effects of lower limits that might result from lowered per capita income for the provider's area or a change in an area's SMSA/SCSA designation. Thus, if changes in an area's per capita income level or SMSA/SCSA designation since publication of the previous schedule of limits places the area in a group lower than that in which it appeared in the previous schedule, the limit to be applied for the effective period of the schedule published in this Notice will be the higher of the limit published herein for the group in which the hospital is actually classified or the limit published herein for the group in which the hospital was classified in the immediately preceding cost reporting period.

For instance, widespread devastation in an SMSA/SCSA caused by a natural disaster, e.g., hurricane, can result in severe economic loss which manifests itself in a sharp drop in the SMSA/SCSA's per capita income during one year. The depression of per capita income caused by the extreme economic dislocation may result in reclassifying the SMSA/SCSA from a group having a higher limit into a group having a lower limit. Because the reduction in per capita income is usually indicative of adverse economic conditions rather than lower than average hospital cost in the area, the resulting classification may not appropriately account for providers' cost of doing business under normal circumstances. In order to address this situation, the revised cost limit applicable to the group in which the provider has been classified during the immediately preceding cost reporting period will be applied for the current cost reporting period. Thus, a provider moving from Group II to Group III as a result of changes in per capita income will continue to be subject to the limits (if higher) applicable to Group II. This provision will be applied only to the cost reporting period immediately following a change in the provider's grouping (e.g., from Group II to Group III). This provision primarily will lessen the effect of unusual short-term fluctuations in area per capita income and the impact of such fluctuations on reimbursement of individual providers. SMSA and non-SMSA areas affected are indicated in the list of groups by an asterisk preceding the area name.

Example:

Hospital A. Bed Size: 150. Per capita income in the provider's SMSA during the period on which the classification is based was reduced because of the effects of a severe drought. Provider A had been classified in Group II effective July 1, 1975, and is now classified in Group III beginning July 1, 1976. The limit to be applied to Provider A beginning July 1, 1976, is the higher of the Group II limit or the Group III limit.

Interested parties were given 30 days from the date of publication of the proposed schedule of limits within which to submit data, views, and arguments. Comments and suggestions received with regard to that notice of proposed Schedule of Limits, responses thereto, and changes made in the proposed schedule of limits are summarized below.

1. Some comments questioned the use of the Standard Consolidated Statistical Area (SCSA) concept in the classification process. The SCSA concept was first used in granting adjustments to the limits which were in effect for cost reporting periods beginning on or after July 1, 1975. The classification system upon which these limits were based had used only Office of Management and Budget (OMB)-defined Standard Metropolitan Statistical Areas as units of economic environment. In August 1975, OMB published an expanded standard area concept known as the SCSA. Because the SCSA, which included more than one SMSA, represented an improved means of economic comparison, the SCSA was adopted for use in determining cost limits. Fiscal intermediaries and hospitals were apprised of the use of the SCSA in determination of the appropriate cost limit in Intermediary Letter 75–69 which was issued in December 1975. Use of the SCSA as a classifier in establishing the revised limits incorporates the existing policy concerning the SCSA into the published classification system. Counties and cities within an SCSA (as defined in Standard Metropolitan Statistical Areas 1975, revised edition prepared by the Statistical Policy Division, Office of Management and Budget) are classified according to the average per capita income for the entire SCSA. Classification of SCSA's is made without regard to the individual SMSA's contained therein and without regard to State lines or political subdivisions.

2. Several questions centered upon the clause protecting hospitals for 1 year from classification into a lower group as a result of changes in per capita income

or in SMSA/SCSA designation. Concern was expressed over the effect on hospitals in protected areas during subsequent years. Careful consideration was given to the impact of such protection prior to the inclusion of this provision in the proposed schedule. The provision is primarily intended to minimize the impact of short-term fluctuations in per capita income or changes in classification caused by recognition of new or revised SMSA/SCSA designations. The provision was designed to protect hospitals against adverse reimbursement consequences which result from temporary conditions influencing classifications. Such temporary conditions are expected to end during the 1 year protection period. Where changes persist through more than 1 year, they must be considered reflections of actual long-term economic adjustment in an area which properly should be reflected in the cost limits applied to hospitals in the area.

3. There has been some concern that the structure of the classification system and the requirements for reclassification under § 405.460(f)(1) of Regulations No. 5 do not provide for recognition of changes in hospital size during the cost reporting period.

Consideration will be given to a regulatory revision concerning changes in applicable cost limit as a result of change in hospital bed size during the cost reporting period.

4. Comment was made that the footnote describing the limits to be applied to areas protected by the saving clause was ambiguous. The footnote has been revised to clarify its intent.

5. A few parties questioned the change in the actual dollar amount of the new limits when compared with those published for cost reporting periods beginning on or after July 1, 1975. The comment pointed out that limits for some bed size and geographic groups changed proportionately less than did those for other groups. The degree to which the revised limits for each group differ from the limits for each group which were published May 30, 1975, is primarily related to two factors.

First, the rate of increase in hospital costs may differ among providers in various bed-size groups or economic environments. Because the most recently available hospital costs are arrayed each time the limits are revised, differences in the rate of increase in routine hospital costs among classified hospitals influence the degree to which the limits for each group change. The changes in the limits are indications of differing levels of hospital routine cost increases among the various hospital classifications.

Second, the relative change in general economic environment as expressed by changes in per capita income will differ between groups. Because groups are established based on the most recently available per capita income data each time a revised schedule of limits is published, changes in relative income levels may result in some change in group composition. Although the methodology does not change, the use of entirely new data results in limits which reflect relative rather than uniform change.

6. A few comments concentrated on specific issues which were viewed as problems or weaknesses in the classification system. Among these issues were the requirements which must be met by a provider seeking reclassification. An opinion was expressed that reclassification should be available to hospitals whose wage patterns compare unfavorably with area per capita income, because hospital wages may be heavily influenced by factors which are not strongly represented in per capita income data.

As an extension of this opinion, the position was taken that reclassification should be available to hospitals classified in nonmetropolitan areas which operate on the fringes of areas classified as metropolitan. While no classification system will perfectly accommodate every combination of variables, the established classification system seems to provide the most appropriate method of hospital routine cost comparison developed up to this time. The Report of the Senate Finance Committee which accompanied Pub. L. 92–603 directed that limits would be established on a class and presumptive basis. Any such system requires the use of a fixed set of parameters, and the use of such parameters may result in less than perfect description of every circumstance which may arise. It is not practical to expand reclassification to every possible combination of circumstances. However, reclassification will continue to be available where it can be shown that the initial classification resulted from informational or computational error.

A few spokesmen voiced a belief that the limits fail to provide sufficient allowance for the many possible combinations of individual determinants of routine cost. The contention is that the individual components of cost differ in importance among different hospitals. For example, one comment held that levels of wage settlements and union organization of some hospital employees should be recognized in the cost limit.

Where the influence of some characteristic is common to the universe of hospitals it may be desirable to incorporate that additional characteristic into the classification system. However, the characteristics examined so far have not been found to be present consistently throughout the universe of hospitals. Examination of characteristics which may be suggested for inclusion in the classification system will continue.

7. The view was again expressed that the classification system does not include such factors as patient mix and specialized service. Such factors may produce higher total costs in some institutions, although their impact on the routine cost portion of total hospital cost has not been demonstrated. Such factors have some correlation with bed size. Larger facilities exhibit both higher proportions of complicated cases and higher incidences of specialized services. Because hospitals are grouped by bed size in establishing the limits, hospitals offering specialized services or treating more serious cases tend to be in the same classification group for comparison with one another. Thus, to the extent that such variables as patient mix and scope of service do influence general routine operating costs, the limits would tend to reflect this influence. However, no substantial evidence has been offered to support the contention that inclusion of patient mix and specialized services as separate factors in the system would more accurately reflect hospital costs and no such evidence has been found in the development of these cost limits.

8. The source of per capita income data was questioned. Per capita income used to group SCSA/SMSA's and non-SCSA/SMSA's was taken from the Survey of Current Business, April 1975, Volume 55, Number 4, published by the the United States Department of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis.

9. A number of comments which were received duplicated comments made prior to publication of the previous sets of limits. A discussion of these items can be found in the FEDERAL REGISTER (40 FR 23622) published May 30, 1975, and the FEDERAL REGISTER (FR 20164) published June 6, 1974.

10. Several editorial changes have been made in the interest of clarity and uniformity. A number of SMSA/SCSA titles were revised to conform to the titles used by OMB in the publication, *Standard Metropolitan Statistical Areas 1975*, revised edition. No change has been made in the geographical area included in the SMSA/SCSA's whose titles were revised. The revisions are purely editorial and were made so that usage of the titles in this notice and in the OMB document will be consistent.

The changes made to the classification system are intended as improvements over the current system. The revised system will better identify hospitals whose costs are substantially higher than those deemed necessary in the efficient delivery of inpatient general routine hospital services by providing a more adequate response to the economic conditions in a hospital's location.

The Secretary has found that establishing an effective date for the sched-

ule of limits herein contained later than July 1, 1976, is contrary to the public interest and that, therefore, good cause exists for making this schedule effective less than 30 days following publication in the FEDERAL REGISTER.

It is in the interest of the affected parties to have the Schedule take effect on July 1, 1976. First, the Schedule of Limits on Hospital Inpatient General Routine Service Costs is familiar to hospitals and fiscal intermediaries. Similar schedules have been published twice in the past, and, in both cases, the published limits were effective on July 1. The July 1 effective date coincides with the beginning of the reporting period for many hospitals. Although the schedule now being published includes several changes from the schedule for cost reporting periods beginning on or after July 1, 1975, these changes were published with the proposed Schedule of Limits which appeared in the FEDERAL REGISTER on May 4, 1976 (41 FR 18465). No substantive changes have been made in the Schedule published in proposed form at that time.

Further, the revised limits are more representative of current costs because the amounts are based on more recent hospital cost data which reflect the changes in hospital costs which have been experienced since publication of the most recent set of limits.

Use of the Standard Consolidated Statistical Area (SCSA) and provision of the saving clause, which are described in detail above, will result in a number of hospitals receiving higher limits than those which would have applied had the previous classification structure remained in effect. In the interest of giving all hospitals the benefit of these changes at the start of the ensuing cost reporting period it is necessary to have the revised limits take effect July 1, 1976.

Delay of the effective date beyond July 1, 1976, will create some uncertainty for hospitals whose reporting period begins on July 1, 1976. This uncertainty regarding the applicable cost limits and their effect on hospital reimbursement may have an adverse impact on the hospitals' ability to provide service for Medicare beneficiaries and ultimately on the hospitals' financial condition.

Therefore, it is not in the interest of the public, the hospitals, or the Social Security Administration to delay the effective date beyond July 1, 1976.

REVISIONS TO METHODOLOGY

Under the revised classification system, hospitals will be grouped based on their location in either a Standard Consolidated Statistical Area (SCSA) or a Standard Metropolitan Statistical Area (SMSA) which is not included in a SCSA, or a non-Standard Metropolitan Statistical Area/Standard Consolidated Statistical Area (non-SMSA/SCSA). Hospitals located in SMSA/SCSA's are classified on the basis of per capita income in those areas without regard to State lines.

All SMSA's and SCSA's have been divided into the following five groups based on per capita income.

SMSA/SCSA Group I

ALASKA

Anchorage

CALIFORNIA

Los Angeles-Long Beach-Anaheim (SCSA)

Los Angeles-Long Beach
Anaheim-Santa Ana-Garden Grove
Oxnard-Simi Valley-Ventura
Riverside-San Bernardino-Ontario
Salinas-Seaside-Moneterey

San Francisco-Oakland-San Jose (SCSA)

San Francisco-Oakland
San Jose
Vallejo-Fairfield-Napa

COLORADO

Denver-Boulder

CONNECTICUT

Bridgeport
Bristol
Danbury
Hartford
New Britain

(See also New York SCSA)

DISTRICT OF COLUMBIA

Washington, DC–MD–VA

FLORIDA

Miami-Fort Lauderdale (SCSA)

Fort Lauderdale-Hollywood
Miami
Sarasota
West Palm Beach-Boca Raton

HAWAII

Honolulu

ILLINOIS

Chicago-Gary, IL-IN (SCSA)

Chicago, IL
Gary-Hammond-East Chicago, IN
Peoria
Rockford
Springfield

MASSACHUSETTS

Boston-Lawrence-Lowell, MA–NH (SCSA)

Lowell, MA-NH
Lawrence-Haverhill, MA–NH
Boston, MA
Brockton, MA

MICHIGAN

Detroit-Ann Arbor (SCSA)

Detroit
Ann Arbor
Flint

MINNESOTA

Minneapolis-St. Paul, MN–WI

NEVADA

Las Vegas
Reno

NEW JERSEY

(See New York SCSA)

NEW YORK

New York-Newark-Jersey City, NY–NJ–CT (SCSA)

New York, NY–NJ
Newark, NJ
Jersey City, NJ
Paterson-Clifton-Passaic, NJ
Nassau-Suffolk, NY
Long Branch-Asbury Park, NJ
New Brunswick-Perth Amboy-Sayerville, NJ
Norwalk, CT
Stanford, CT
Rochester

NORTH DAKOTA

Fargo-Moorehead, ND–MN

OHIO

Cleveland-Akron-Lorain (SCSA)

Cleveland
Akron
Lorain-Elyria

VIRGINIA

Richmond

WISCONSIN

Kenosha

SMSA/SCSA Group II

ARIZONA

Phoenix

CALIFORNIA

Santa Barbara-Santa Maria-Lompoc
San Diego
Stockton

CONNECTICUT

*Meriden
New London-Norwich
*New Haven-West Haven
*Waterbury

DELAWARE

(See Philadelphia SCSA)

GEORGIA

Atlanta

ILLINOIS

*Decatur
Kankakee

INDIANA

Anderson
Fort Wayne
Indianapolis
South Bend

IOWA

Cedar Rapids
Davenport-Rock Island-Moline, IA–IL
Des Moines
Waterloo-Cedar Falls

KANSAS

Wichita

KENTUCKY

Louisville, KY–IN

MARYLAND

Baltimore

MASSACHUSETTS

Pittsfield

MICHIGAN

Battle Creek
Grand Rapids
Jackson
Lansing-East Lansing
Saginaw

MINNESOTA

Rochester

MISSOURI

Kansas City, MO–KS
St. Louis, MO–IL

NEW JERSEY

(See Philadelphia SCSA)

NEW YORK

Albany-Schnectady-Troy
Buffalo
Poughkeepsie

OHIO

Cincinnati-Hamilton, OH–KY–IN (SCSA)

Cincinnati, OH–KY–IN
Hamilton-Middletown, OH
Dayton
Lima
Toledo, OH–MI
Youngstown-Warren

OREGON

Portland, OR–WA

PENNSYLVANIA

Philadelphia-Wilmington-Trenton, PA–DE–MD–NJ (SCSA)

Philadelphia, PA–NJ
*Trenton, NJ
*Wilmington, DE
Allentown-Bethlehem-Easton, Pa–NJ
Harrisburg
Lancaster
Pittsburgh
Reading

TEXAS

Houston-Galveston (SCSA)

Houston
Galveston-Texas City
Dallas-Fort Worth
Midland

WASHINGTON

Seattle-Tacoma, (SCSA)

Seattle-Everett
Tacoma
Richland-Kennewick

WISCONSIN

Milwaukee-Racine, (SCSA)

*Milwaukee
Madison
Racine

SMSA/SCSA Group III

ALABAMA

Birmingham

CALIFORNIA

Bakersfield
Fresno
Modesto
Sacramento
Santa Cruz
Santa Rosa

FLORIDA

Jacksonville
Orlando
Tampa-St. Petersburg

IDAHO

*Boise City

ILLINOIS

*Bloomington-Normal
Champaign-Urbana-Rantoul

INDIANA

Evansville, IN–KY
Lafayette-West Lafayette

IOWA

Dubuque
Sioux City, IA–NE

KANSAS

*Topeka

KENTUCKY

Lexington-Fayette

LOUISIANA

New Orleans

MAINE

Portland

MASSACHUSETTS

*Fitchburg-Leominster
Springfield-Chicopee-Holyoke
*Worcester

MICHIGAN

Bay City
Kalamazoo-Portage

MISSOURI

St. Joseph

MONTANA

Billings
Great Falls

NEBRASKA

Lincoln
Omaha, NE–IA

NEW HAMPSHIRE

Nashua
Manchester

NEW JERSEY

Atlantic City
Vineland-Millville-Bridgeton

NEW YORK

Binghampton, NY–PA
Elmira
Syracuse

NORTH CAROLINA

*Charlotte-Gastonia
Greensboro-Winston-Salem-High Point
Raleigh-Durham

OHIO

Columbus
Canton
*Mansfield
Springfield
Steubenville-Weirton, OH–WV

OKLAHOMA

Tulsa

PENNSYLVANIA

Erie
York

RHODE ISLAND

Providence-Warwick-Pawtucket

SOUTH DAKOTA

Sioux Falls

TENNESSEE

Nashville-Davidson
Memphis, TN–AR–MS

TEXAS

Amarillo
*Wichita Falls

VIRGINIA

Newport News-Hampton
Norfolk-Virginia Beach-Portsmouth, VA–NC
Roanoke

WASHINGTON

Spokane
Yakima

WEST VIRGINIA

Charleston

WISCONSIN

Appleton-Oshkosh

SMSA/SCSA Group IV

ALABAMA

Montgomery

ARIZONA

*Tucson

ARKANSAS

*Little Rock-North Little Rock

COLORADO

*Colorado Springs
Pueblo

FLORIDA

Daytona Beach
Fort Meyers
*Lakeland-Winter Haven
Melbourne-Titusville-Cocoa
Tallahassee

GEORGIA

Augusta, GA–SC
Macon
Savannah

INDIANA

Munice
Terre Haute

KENTUCKY

Owensboro

MASSACHUSETTS

New Bedford
Fall River, MA–RI

MICHIGAN

Muskegon-Norton Shores-Muskegon Heights

MINNESOTA

Duluth-Superior, MN–WI

MISSISSIPPI

Jackson

MISSOURI

Springfield

NEW MEXICO

Albuquerque

NEW YORK

Utica-Rome

NORTH CAROLINA

Ashville
Burlington

OKLAHOMA

*Oklahoma City

OREGON

Eugene-Springfield
Salem

PENNSYLVANIA

Wilkes Barre-Scranton-Hazelton (Northeast PA)
Williamsport

SOUTH CAROLINA

Columbia
Greenville-Spartanburg

TENNESSEE

Chattanooga, TN–GA
Clarksville-Hopkinsville, TN–KY

TEXAS

Abilene
Austin
*Beaumont-Port Arthur-Orange
*Killeen-Temple
Longview
Lubbock
Odessa
San Angelo
San Antonio
Sherman-Denison
Tyler
Waco

UTAH

Salt Lake City-Ogden

VIRGINIA

Petersburg-Colonial Heights-Hopewell
Lynchburg

WEST VIRGINIA

Parkersburg-Marietta, WV–OH
Wheeling, WV–OH

WISCONSIN

Green Bay
La Crosse

SMSA/SCSA Group V

ALABAMA

Anniston
Florence
Gadsden
Huntsville
Mobile
Tuscaloosa

ARKANSAS

Fayetteville-Springdale
Fort Smith, AR–OK
Pine Bluff

COLORADO

Greeley
Fort Collins

FLORIDA

*Gainesville
*Pensacola

GEORIGA

Albany
Columbus, GA–AL

INDIANA

Bloomington

LOUISIANA

Alexandria
*Baton Rouge
Lafayette
Lake Charles
Monroe
*Shreveport

MAINE

Lewiston-Auburn

MINNESOTA

St. Cloud

MISSOURI

Columbia

MISSISSIPPI

Biloxi-Gulfport
Pascagoula-Moss Point

NORTH CAROLINA

Fayetteville
Wilmington

OKLAHOMA

Lawton

PENNSYLVANIA

Altoona
Johnstown

PUERTO RICO

Caguas
Mayaguez
Ponce
San Juan

SOUTH CAROLINA

Charleston-North Charleston

TENNESSEE

Johnson City-Kingsport-Bristol, TN-VA	*Knoxville

TEXAS

Brownsville-Harlingen-San Benito	El Paso
Bryan-College Station	Laredo
Corpus Christi	McAllen-Pharr-Edinburg
	Texarkana, TX-AR

UTAH

Provo-Orem

WEST VIRGINIA

Huntington-Ashland, WV-KY-OH

WISCONSIN

Eau Claire

*Hospitals in areas (SCSA or SMSA) identified by an asterisk will receive the higher of the limit published herein for the group in which the hospital is actually classified or the limit published herein for the group in which the hospital was classified in the immediately preceding cost reporting period.

Non-SMSA/SCSA areas will be classified according to the per capita income of all non-SMSA/SCSA counties within a State. The following are the five income groupings, with States classified according to per capita income to be used for hospitals located in non-Standard Metropolitan Statistical/Standard Consolidated Statistical Areas in those States.

NON-SMSA/SCSA

GROUP I

Alaska	Nebraska
Illinois	Nevada
Iowa	New Jersey
Kansas	North Dakota
Massachusetts	Washington

GROUP II

California	Maryland
*Connecticut	Minnesota
*Delaware	Montana
Hawaii	South Dakota
*Indiana	Wyoming

GROUP III

Florida	*Ohio
Idaho	Oklahoma
Michigan	*Oregon
Missouri	Pennsylvania
*New Hampshire	*Vermont
*New York	

GROUP IV

*Arizona	North Carolina
Arkansas	Texas
*Colorado	Virginia
Maine	*Wisconsin

GROUP V

Alabama	Puerto Rico
*Georgia	*South Carolina
Kentucky	Tennessee
Louisiana	Utah
Mississippi	Virgin Islands
*New Mexico	West Virginia

*Hospitals in States identified by an asterisk will receive the higher of the limit published herein for the group in which the hospital is actually classified or the limit published herein for the group in which the hospital was classified in the immediately preceding cost reporting period.

With respect to the Standard Consolidated Statistical Area/Standard Metropolitan Statistical Area groupings, the groupings were developed by combining those SCSA/SMSA's which reflect a similar economic environment as expressed by per capita income data. The SCSA/SMSA's were arrayed in order of the size of their per capita income and groupings were established. The same procedure was followed for grouping the non-SCSA/SMSA areas to arrive at State groups.

The following bed-size categories are used to classify hospitals:

STANDARD METROPOLITAN CONSOLIDATED STATISTICAL AREAS

Groups I and II	*Groups III, IV, and V*
Less than 100	Less than 100
100–404	100–404
405–684	405 and above
685 and above	

NON-STANDARD METROPOLITAN CONSOLIDATED STATISTICAL AREAS

Less than 100
100–169
170 and above

The proposed limits were developed in the following manner:

1. Inpatient general routine service cost data for each participating hospital were obtained from the fiscal intermediaries.

2. The data for hospitals in each class were arrayed in descending order of inpatient general routine service cost.

3. The 80th percentile and the median were computed for each class.

4. For each class, an amount equal to 10 percent of the median was added to the 80th percentile amount.

5. This sum was adjusted to reflect the 14.5 percent annual rate of estimated cost increases in per diem routine service costs following the date of data collection.

6. The amounts calculated in step 5 are rounded to the next highest dollar which establishes the limit for each class, subject to adjustment for hospitals reporting on other than a reporting period beginning July 1, 1976.

Under the authority of section 1861(v) of the Social Security Act, the following cost limitations apply to the total of the hospital inpatient general routine service costs (excluding costs incurred for special care units and ancillary services), adjusted upward as provided for below. The limits are applicable to cost reporting periods beginning on or after July 1, 1976, and will remain in effect until the effective date of a revised schedule. However, this schedule will apply to the entire cost-reporting period of a hospital whose cost-reporting period begins during its effective period.

The limits are applicable to any hospital with a cost reporting period beginning on or after July 1, 1976. Where a hospital has a cost reporting period beginning after July 1, 1976, the published limit will be adjusted upward by a factor of 1.21 percent for each elapsed month between July 1, 1976, and the month in which the hospital's reporting period begins. The result of this calculation is not rounded and is to be given in dollars and cents.

Example: Hospital A's cost reporting period starting in 1976 begins October 1, 1976, and ends September 30, 1977. The cost factor for Hospital A's group from the table below is $100.00.

COMPUTATION OF ADJUSTED COST LIMIT

Cost factor	$100.00
Plus: Adjustment for 3-month period (July 1, 1976, to Sept. 30, 1976), 3 months×1.21%=3.63%, 3.63%×cost factor	3.63
Adjusted cost limit applicable to Hospital A for the Oct. 1, 1976, to Sept. 30, 1977, reporting period	103.63

SCHEDULE OF LIMITS ON HOSPITAL INPATIENT GENERAL ROUTINE SERVICE COSTS FOR HOSPITALS WITH COST-REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1976

Hospitals located within SMSA/SCSA's (metropolitan) bed size

SMSA group	Less than 100	100 to 404	405 to 684	685 and above
I[1]	$124	$130	$146	$193
II	104	109	109	128
III	98	101	98	98
IV	87	94	93	93
V	76	80	94	94

[1] Limits apply to all group I SMSA's except Anchorage, Alaska, and Honolulu, Hawaii, where cost-of-living adjustment (22.5 pct Anchorage, Alaska; 12.5 pct Honolulu, Hawaii) was made. The limits for these areas are as follows:

	Less than 100	100 to 404	405 to 684	685 and above
Anchorage	$152	$159	$179	$237
Honolulu	140	146	164	217

Hospitals located outside SMSA/SCSA's (nonmetropolitan) bed size

State group	Less than 100	100 to 169	170 and above
I[1]	$87	$101	$96
II[2]	94	100	96
III	85	89	90
IV	81	79	87
V	75	76	77

[1] Limits apply to all group I States except Alaska where cost-of-living adjustment (25 percent) was made. Limits for Alaska are: Less than 100, $109; 100 to 169, $126; 170 and above, $119.

[2] Applies to all group II States except Hawaii where cost-of-living adjustment (12.5 percent) was made—limits for Hawaii are: Less than 100, $106; 100 to 169, $112; 170 and above, $108.

(Secs. 1102, 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 49 Stat. 647, as amended; 79 Stat. 313, as amended; 79 Stat. 327, as amended; 79 Stat. 331; 42 U.S.C. 1302, 1395x(v), 1395cc(a), and 1395hh.)

Effective date. The Schedule of Limits will be effective for cost reporting periods beginning on or after July 1, 1976, and will remain in effect until the effective date of any revised schedule which may be published.

(Catalog of Federal Domestic Assistance, Program No. 13.800, Health Insurance for the Aged—Hospital Insurance.)

Dated: June 14, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: June 23, 1976.

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

[FR Doc.76-18781 Filed 6-29-76;8:45 am]

federal register

WEDNESDAY, JUNE 30, 1976



PART III:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

TREE NUTS AND PEANUTS

Good Manufacturing Practice Regulation

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[21 CFR Part 128f]

[Docket No. 76N-0037]

TREE NUTS AND PEANUTS

Good Manufacturing Practice Regulation

The Food and Drug Administration (FDA) has evaluated the conditions under which tree nuts and peanuts are manufactured, processed, packed, and held for human consumption and has determined that existing industry procedures are not sufficient to assure the production of safe and sanitary products. Accordingly, FDA is proposing to establish a good manufacturing practice regulation for nuts (almonds, Brazil nuts, cashew nuts, filberts, Macadamia nuts, peanuts, pecans, pine nuts, pistachio nuts, walnuts), which will provide processors, shellers, warehousemen, and manufacturers of nut products with procedures for manufacturing products that are free of poisonous or deleterious substances, filth, and disease-causing microorganisms. Interested persons have until August 30, 1976, to submit comments.

After consideration of all comments received in response to this proposal, a final regulation will be published in the FEDERAL REGISTER. The Commissioner proposes that the final regulation be effective 60 days after the date of its publication in the FEDERAL REGISTER.

Nuts are subject to attack by molds; and they attract insects, birds, and rodents, all of which have the potential for leaving harmful or obnoxious residues. The ultimate effectiveness of the cleaning, sorting, and sanitizing operations employed in the manufacturing process is dependent in part on the load placed on the equipment by the practices employed in the harvesting operations. The level of contamination of the nuts is affected by the practices employed, the predations of insects, birds or rodents, and the unintentional commingling of damaged nuts with sound nuts. The manufacturer has the capability of ensuring a supply of clean sound nuts by education and the application of acceptability standards.

Agricultural, manufacturing and warehousing practices have been developed that are generally applicable for preventing or reducing to an acceptable minimum the types of contamination associated with the production and storage of nuts. The information has been widely disseminated by trade organizations such as the DFA (Dried Fruit Association) of California, the National Pecan Shellers and Processors Association, and the National Peanut Council, and by State agricultural extension services. However, in the 6-year period 1970 through 1975, FDA inspected 2,704 nut-processing and warehousing firms and took legal actions for sanitary violations involving 135 of the firms. Most violations could have been prevented by application of the trade association-recommended practices. The violations fall into the following categories: 81 for residues or damage from molds, insects, rodents, or birds; 34 for the presence of *Escherichia coli;* 3 for the presence of aflatoxins; and 17 for insanitary storage.

The resistance of nuts to invason by microorganisms such as molds is dependent in part on the available moisture, which is measured as water activity (a_w), a property sometimes referred to as interstitial or equilibrium relative humidity. For a discussion of the role of a_w in microbial invasion of foods, see W. J. Scott in "Advances in Food Research," vol. VII, pp. 83–127, 1957, Academic Press, New York, NY 10003. This principle is recognized in the use of drying for preservation of certain foods. The total moisture of a product is often used as an indicator of a_w, but for nuts, in part because of the variable and high oil content, there is a poor correlation. Since a_w, not total moisture, is the critical factor, a "safe moisture level" should be defined in terms of a_w. The lowest water activity capable of supporting growth of molds encountered on stored nuts or nut meats is determined by members of the *Aspergillus glaucus* group of which *A. amstelodami, A. chevalieri, A. repens,* and *A. ruber* are most likely to be encountered. A "safe moisture level" is defined in proposed § 128f.1(f) as an a_w that does not exceed 0.70 at 77° F. Practical methods for determination of a_w have been developed and instrumentation is commercially available.

The a_w of nut meats increases with increased temperature. Since nuts are often stored in bulk at low temperature, the relative humidity of the storage area atmosphere with which the moisture in the nuts will equilibriate is an important consideration. An a_w of 0.70 in nuts at 10° F, resulting from prolonged storage in bulk in a refrigerated atmosphere at 70 percent relative humidity, can result in an a_w at 77° F that will support mold growth.

Because the existing recommendations for good manufacturing practices are scattered among a number of sources and not consolidated in a single convenient form of reference, and since existing industry procedures are not sufficient to assure production of safe and sanitary nuts for the channels of commerce, the Commisioner of Food and Drugs considers it desirable to combine and expand on the various existing recommendations and issue a regulation complementing, but not superseding 21 CFR Part 128 "Human Foods; Current Good Manufacturing Practice (Sanitation) in Manufacture, Processing, Packing, or Holding."

The provisions of the National Peanut Council's "Voluntary Code of Good Practices for Peanut Product Manufacturers," the National Pecan Shellers and Processors Association's "Good Manufacturing Guidelines for the Pecan Shelling Industry," the DFA of California's "Sanitation Handbook," and the Codex Alimentarius Commission's "Recommended International Code of Hygienic Practice for Tree Nuts," "Recommended International Code of Practice for Groundnuts (Peanuts)," and "Recommended International Code of Practice, General Principles of Food Hygiene" have all been considered in the development of these proposed regulations.

Copies of the documents cited above in this preamble and technical backup for the proposed provisions concerning a_w have been placed on display for public review at the office of the Hearing Clerk, Food and Drug Administartion, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852.

The proposal sets out requirements for such things as: plant design and construction; equipment and utensil construction and mainetnance; critical processes and controls; conditions for safe storage; the cleaning of equipment; compliance with FDA regulations, guidelines, and action levels for poisonous or deleterious substances and natural or unavoidable defects; and coding and recordkeeping.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. The Commissioner has also carefully considered the inflation impact of the proposed regulation as required by Executive Order 11821, OMB Circular A-107, and Guidelines issued by the Department of Health, Education, and Welfare, and no major inflation impact has been found. Copies of the FDA environmental and inflation impact assessments are on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a) (3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a))) and under authority delegated to him (21 CFR 5.1) (Recodification published in FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), the Commissioner proposes that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 128f to read as follows:

PART 128f—TREE NUTS AND PEANUTS

Sec.

128f.1 Definitions.
128f.2 Current good manufacturing practice.
128f.3 Plant and grounds.
128f.4 Equipment and utensils.
128f.7 Processes and controls.
128f.8 Records.

AUTHORITY: Sec. 402 (a) (3) and (4), 701 (a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a)).

§ 128f.1 Definitions.

For the purposes of this part, the following definitions apply:

(a) "In-shell nut" is the nut with the shell intact, but without the hull. The shell may or may not be polished.

(b) "Lot"means a collection of primary containers or units of the same size, type, and style, containing product produced under conditions as nearly uniform as possible, designated by a common container code or marking, and in the case of product in a retail package, no more than a day's production.

(c) "Nuts" means in-shell or shelled, raw, roasted, or salted nuts including but not limited to the following varieties:

(1) *Almonds.* The seed or fruit of *Prunus amygdalus* (*Amygdalus communis*) sweet variety.

(2) *Brazil nuts.* The seed of *Berthrolletia myrtaceae.*

(3) *Cashew nuts.* The seed or fruit of *Anacardium occidentale.*

(4) *Filberts* (also known as hazelnuts). The seed or fruit of various species of *Corylus,* particularly *C. americana, C. avellana* and *C. maxima.*

(5) *Macadamia nuts.* The seed or fruit of *Macadamia integrifolia, M. tetraphylla* and other *Macadamia* spp.

(6) *Peanuts.* The fruit or pod of *Arachis hypogaea.*

(7) *Pecans.* The seed or fruit of any of the multiple varieties of *Carya illinoensis.*

(8) *Pine nuts (also known as stone, pinon, pignon, or pignolia nuts).* The fruit of *Pinus* spp.

(9) *Pistachio nuts.* The seed or fruit of *Pistachia vera.*

(10) *Black walnuts.* The seed or fruit of *Juglans nigra.*

(11) *English walnuts.* The seed or fruit of *Juglans regia.*

(d) "Nut meats" are the kernels of the nut from which shell and septa have been removed. The testa, or skin, may or may not be removed.

(e) "Safe and suitable" is defined at § 10.1(d) (21 CFR 10.1(d)).

(f) "Safe moisture level" is a level that will prevent the growth of microorganisms in the nut harvesting, processing, and storage environment. The maximum safe moisture levels for the various nut meats are established by their water activity (a_w). An a_w at or below 0.70 at 77° F is considered safe.

(g) "Sanitizing" means the application of heat and/or other forms of energy and/or chemical agents for a period of time, of such intensity, and under such conditions as to destroy effectively vegetative cells of pathogenic bacteria and substantially to reduce the numbers of other microorganisms.

(h) "Shall" refers to mandatory requirements and "should" refers to recommended or advisory procedures or equipment.

(i) "Water activity" (a_w) is a measure of the free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

§ 128f.2 Current good manufacturing practice.

(a) The criteria in §§ 128f.3 through 128f.8, as well as the criteria in Part 128 of this chapter (21 CFR Part 128), shall apply in determining whether an article of nuts is adulterated (1) within the meaning of section 402(a)(4) of the act (21 U.S.C. 342(a)(4)), in that it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health, or (2) within the meaning of section 402(a)(3) of the act (21 U.S.C. 342(a)(3)) in that it has been manufactured under such conditions that it is unfit for food.

(b) Pertinent criteria from Part 128 of this chapter have been incorporated into §§ 128f.3 through 128f.8 to emphasize critical control points in the manufacture, processing, packing, or holding of nuts.

§ 128f.3 Plant and grounds.

Construction and facilities shall be adequate to prevent contamination of products, raw materials, or packaging materials with microorganisms, chemicals, filth or other extraneous material. This may be accomplished by:

(a) Separating the following groups of operations, as appropriate to each establishment, by partition, location, airflow, enclosed systems or other effective means:

(1) Raw nut receiving, dehulling, and cleaning.

(2) Clean nut receiving, storage, sanitizing, cracking, sorting, polishing, and packaging.

(3) Reception of processing and packaging materials.

(4) Finished product storage and shipping.

(b) Using imperforate construction, curbing, and adequate grade to assure water drainage for walkways over processing areas.

(c) Installing ducts and pipes and their terminal collectors in a manner to permit access in and around these conduits and collectors for cleaning, and by protecting the conduits and collectors from temperature differentials that can result in moisture condensation in or upon them.

(d) Restricting openings for access to nut storage and processing areas to a size no larger than that needed for the intended purpose and by protecting the openings against entry by rodents, birds, and insects with self-closing doors or screens, or with air flow curtains.

(e) Using construction and materials impervious to weather, insects, birds, and rodents.

§ 128f.4 Equipment and utensils.

All equipment shall be maintained so as effectively to remove contaminants and to prevent contamination of product. All equipment surfaces or processing devices that make contact with nut meats shall be safe and suitable. Seams on surfaces that make contact with nut means shall be smoothly bonded or maintained so as to prevent microbiological contamination in places where dirt or organic material might accumulate.

(a) *Harvest containers.* Tote boxes, bins, bags, and other containers for transporting nuts shall be of such construction and so maintained that they do not constitute a source of rodent and/or insect contamination.

(b) *Unloading equipment.* Dumping pits, conveyer boots, and conveyers shall be so designed as to keep accumulation of debris and scrap to a minimum. There shall be access to all parts for routine cleaning.

(c) *Cleaning equipment.* Reels, screens, aspirators, brushes, blowers, and magnets shall be so designed that foreign material and defective nuts are effectively separated from the defect-free in-shell nuts and loose nut meats and confined for discharge as inedible product so as to prevent recontamination of product in process.

(d) *Driers.* Driers shall be so designed that the nuts are uniformly dried, and so constructed that accumulation of scrap and debris is kept to a minimum. There shall be access to all sections of the drier for cleaning.

(e) *Storage.* Storage areas for nuts in bulk or in packages shall be equipped to protect the nuts from the growth of microorganisms such as molds. This may be accomplished by using an aeration system of adequate capacity and relative humidity to prevent accumulation of moisture from nut respiration or from temperature differentials within the storage area.

(f) *Belt or vibratory feed sorters.* The nut-carrying surfaces shall be designed and constructed so that they may be easily cleaned. The sorting system shall be capable of handling varying levels and types of defects. This may be accomplished by the use of speed or feed control devices or multiple sorter stations.

(g) *Containers and utensils.* Containers for temporary storage and transport of nut meats and small pieces of equipment such as hand scoops and turning rakes for handling nut meats shall be so constructed that they are easily cleaned. This may be accomplished by the use of rounded contour construction or other suitable means.

(h) *Roasters, salters, packagers.* Equipment for roasting, salting, and packaging in-shell nuts or nut meats shall be so designed that there is access for easy cleaning of all nut-contact surfaces.

§ 128f.7 Processes and controls.

The manufacturer shall employ appropriate quality control procedures and treatments to ensure that raw materials and finished products are wholesome and fit for food, that packaging materials are safe and suitable, and that all of the foregoing materials are otherwise in compliance with the Federal Food, Drug, and Cosmetic Act.

(a) *Harvest containers.* Tote boxes, bins, bags and other containers for transporting nuts shall be emptied of nuts and debris before re-use.

(b) *Raw material inspection.* The manufacturer shall ensure that all incoming nuts or nut meats are of a quality that can be rendered suitable for use as food with the facilities available in the receiving plant. This may be accomplished by a raw material quality control system or by purchase under a supplier's guarantee or certification.

(c) *Raw nut receiving.* The raw nut receiving area shall be cleared of accumulated litter and debris as frequently as necessary to prevent the formation of sites that may attract and harbor rodents, birds, and insects, or form the loci for growth of microorganisms.

(d) *Raw nut cleaning.* Reels, screens, aspirators, brushes, blowers, and magnets shall be operated in a manner to separate in-shell nuts, loose kernels, and foreign material from each other and to provide in-shell nuts and kernels essentially free of dirt, debris, husks, and

visible adhering foreign material. The operating parts shall be cleared of debris and dirt accumulations as frequently as necessary to maintain effective operations. The dirt and trash separated from the nuts by the cleaning operation shall be removed from the premises as frequently as necessary to prevent overloading of the collection devices. Defective nuts collected for non-food use shall be placed in containers clearly distinguishable from edible product containers.

(e) *Protection from mold invasion.* Nuts and nut meats shall be stored and processed in a manner such that the growth of mold is prevented. This may be accomplished by drying to a "safe moisture level" or by storing at a temperature sufficiently low to reduce both water activity and mold viability to a point where mold growth is prevented. Localized rewetting of nuts or nut meats in storage from accumulations of moisture due to nut respiration or from temperature differentials within the storage area may be prevented by an adequate rate and frequency of aeration.

(f) *Prevention of filth or microorganism transfer.* All in-shell tree nuts (excludes peanuts) that have been exposed to conditions whereby they may have become contaminated with fifth or microorganisms of public health significance shall be adequately cleaned, and sanitized if necessary, to prevent transfer of the filth or microorganisms to the kernel when the nuts are shelled. This may be accomplished by the use of heat and/or other forms of energy and/or chemical agents. Any physical or chemical agents shall be employed in conformity with all applicable Food and Drug Administration regulations and guidelines. Regulating and/or recording devices for control of the treatment parameters shall be accurate and effective for their intended use. All conveyer or processing surfaces making contact with clean in-shell nuts or with nut meats shall be adequately cleaned to prevent contamination of the clean product.

(g) *Separation of meat and shell.* Flotation and picker equipment shall be operated in a manner to achieve effective separation of nut meat and shell and to avoid increasing the bacterial load on the separated meats. This may be accomplished by keeping the accumulation of debris in flotation tanks and on picking equipment to a minimum consistent with effective operation and by cleaning and/or sanitizing the equipment on a schedule designed to prevent the buildup of microorganism populations.

(h) *Sorting and inspection.* Debris and defective nuts shall be separated from the clean nuts before packing in retail distribution containers, so as to obtain a product that complies with current Food and Drug Administration regulations, guidelines, and action levels for natural or unavoidable defects unless the lot has been consigned for delivery to another manufacturer who will perform this service. This may be achieved through the use of photoelectric and/or visual inspection sorters and by illumination with light of a wavelength suitable for differentiation of debris from product such as, for example, the method used to distinguish curculio larvae from pecan nut meat pieces.

(i) *Poisonous or deleterious substances.* The manufacturer shall ensure that nuts susceptible to aflatoxin contamination comply with current Food and Drug Administration regulations, guidelines, and action levels for poisonous or deleterious substances before these materials are incorporated into finished product. Compliance with this requirement may be accomplished by acceptance of nuts or nut meats for processing under a supplier's guarantee or certification, or by analyzing the nuts, nut meats, or consumer products for aflatoxins, or by other effective means.

(j) *Natural or unavoidable defects.* The manufacturer shall ensure that consumer products comply with current Food and Drug Administration regulations, guidelines, and action levels for natural or unavoidable defects, such as damage by animals, birds, or microorganisms, or the presence of extraneous material. Compliance with this requirement may be accomplished by examining these products for infestation and contamination.

(k) *Containers and utensils.* Containers for storage and transport of cleaned or sanitized in-shell nuts or of nut meat products shall be maintained and used in a manner to prevent product contamination. This may be accomplished by the use of racks, dollies, or similar devices to keep containers from contact with the floor, particularly when containers are of the nesting type. Small pieces of equipment, such as scoops, rakes, and paddles, used for handling cleaned or sanitized nuts or nut meat products, shall be maintained in a clean condition. This may be accomplished by hanging such equipment, when not in use, or by placing it on clean surfaces.

(l) *Package and storage.* All nut products shall be packed and/or stored in a manner to prevent contamination by insects, rodents, and other pests, and the growth of molds. Growth of molds may be prevented by packing nut products that have been dried to a "safe moisture level" or by storing at a temperature sufficiently low to reduce both water activity and mold viability to a point that mold growth is prevented. Exposed nut products in storage may be maintained at or dried to a "safe moisture level" by control of the relative humidity of the circulating air. When this control is combined with refrigerated storage, the fact that the water activity of the nut meats will increase when the meats are warmed to room temperature must be taken into consideration.

(m) *Coding.* Permanently legible code marks shall be placed at a readily visible location on each shipping container, or they shall be placed on each finished product package delivered or displayed to retail purchasers and be visible on the unopened package. The code marks may be placed in both locations, if desired by the manufacturer. Such marks shall identify at least the plant where packed and the lot.

(n) *Cleanup operations.* Cleaning of and around equipment with recesses that cannot be completely emptied of fermentable particles shall be in such a manner that the trapped particles do not provide a locus for microbial growth. This may be accomplished by using waterless cleaning methods in and around such equipment, such as airjet, vacuum, and sweeping with adsorbent particulates. Wet methods with appropriate detergents and sanitizing agents may be employed for all other areas.

(o) *Hazardous substances.* Poisonous or dangerous cleaning compounds, sanitizing agents, and pesticide chemicals shall be applied, stored, and held in such a manner as to prevent food or packaging material contamination. These materials shall be identified and used only in such a manner and under such conditions as will be safe for their intended use. Any applicable regulations promulgated by the Environmental Protection Agency for the application, use, or holding of such materials shall be followed.

§ 128f.8 Records.

(a) Records shall be maintained of results of examinations of raw materials, packaging materials, and finished products and of suppliers' guarantees or certifications that verify compliance with Food and Drug Administration regulations, guidelines, or action levels.

(b) Processing and production records covering processes intended to sanitize or otherwise treat materials to destroy pathogenic microorganisms shall be maintained and shall contain sufficient information to permit a public health evaluation of the processes.

(c) Records shall be maintained to identify the initial distribution of the finished product to facilitate, when necessary, the segregation of specific lots that may have become contaminated or otherwise unfit for their intended use.

(d) The records required by paragraphs (a), (b), and (c) of this section shall be retained for a period of time that exceeds the shelf life of the finished product, except that they need not be retained more than 2 years.

Interested persons may, on or before August 30, 1976, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: June 22, 1976.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

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WEDNESDAY, JUNE 30, 1976



PART IV:

SECURITIES AND EXCHANGE COMMISSION

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SELF-REGULATORY ORGANIZATIONS

Proposal on Final Disciplinary Actions

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release 34-12561, Filed No. S7-640]

SELF-REGULATORY ORGANIZATIONS

Proposal Concerning Final Disciplinary Actions

The Commission today published for comment proposed Securities Exchange Act Rules 19d-1, 2 and 3, and 19h-1 and proposed rescission of Rules 15Ab-1 (17 CFR 240.15Ab-1) and 15Ag-1 (17 CFR 240.15Ag-1). The proposed Rules are as follows:

1. Proposed Rule 19d-1 would require self-regulatory organizations ("SRO's") for which the Commission is the appropriate regulatory agency to give the Commission notice of all final disciplinary actions, denials of membership, participation or association with a member, or prohibitions or limitation of access to services, and summary suspensions or limitations of membership, participation or association, imposed by it on any of its members, participants, persons associated with a member or any person, and prescribe the form and content of such notices.

2. Proposed Rule 19d-2 would prescribe the form and content of applications for stays of final disciplinary sanctions and summary actions of SRO's.

3. Proposed Rule 19d-3 would prescribe the form and content of applications for Commission review of final disciplinary sanctions, denials of membership, participation or association with a member, or prohibitions or limitations of access to services imposed by SRO's.

4. Proposed Rule 19h-1 would prescribe the form and content of notices by SRO's of proposed admissions to or continuances in membership, participation or association with a member of any person subject to a statutory disqualification and applications to the Commission for relief from a statutory disqualification.

References in the proposed rules and in this release to self-regulatory organizations ("SRO's") include all national securities exchanges, national securities associations and, depending on the context, all registered clearing agencies or registered clearing agencies for which the Commission is the "appropriate regulatory agency."[1]

[1] As used in this release, the terms "bank clearing agency" or "bank participant" mean a clearing agency or participant for which one of the Federal bank regulatory agencies is the appropriate regulatory agency. The terms "non-bank clearing agency" or "non-bank participant" mean a clearing agency or participant for which the Commission is the "appropriate regulatory agency". See section 3(a)(34)(B) (15 U.S.C. 78c(34)(B)) and (C) (15 U.S.C. 78c(34)(C)) of the Securities Exchange Act of 1934 (the "Act").

In general, the Federal bank regulatory agencies have specific jurisdiction under the Act to adopt comparable rules relating to clearing agencies and their participants in situations where the Commission's rule proposals would not be applicable. The Commission has consulted with these banking authorities in formulating the Commission rules proposed hereby. See section 17A(d)(3)(A)(i) (15 U.S.C. 78q-1(d)(3)(A)(i)) of the Act.

The various statutory relationships between the Commission (as the appropriate regulatory agency) and clearing agencies and their participants, as contemplated by the present rule proposals, may be summarized as follows:

(1) Rule 19d-1 (notices of certain SRO adjudications) would be applicable only to non-bank clearing agencies in cases where the participant was either a bank or non-bank (see section 19(d)(1) of the Act (15 U.S.C. 78s(d)(1))));

(2) Rules 19d-2 (stays of certain adjudications) and 19d-3 (appeals) would be applicable to participants in bank and non-bank clearing agencies in cases where the Commission was the appropriate regulatory agency for the participant (see sections 17A(b)(5)(C) (15 U.S.C. 78q-1(b)(5)(C)) and 19(d)(2) (15 U.S.C. 78s(d)(2)) of the Act);

(3) Rule 19h-1 (proposed admissions and continuances of disqualified persons) would be applicable to all clearing agencies (bank and non-bank) regardless of whether the participant was a bank or non-bank (see sections 17A(b)(4)(A) (15 U.S.C. 78q-1(b)(4)(A)) and 19(h)(2) (15 U.S.C. 78s(h)(2)) of the Act).

[2] Pub. L. 94-29 (June 4, 1975).

BACKGROUND—EFFECT OF THE 1975 AMENDMENTS

Before the Securities Acts Amendments of 1975 (the "1975 Amendments"),[2] oversight powers of the Commission as a regulatory agency under the Act respecting disciplinary sanctions imposed by an SRO were limited to review by the Commission of disciplinary and certain other adjudicatory actions taken by a registered securities association, i.e., the National Association of Securities Dealers, Inc. (the "NASD"). No provision was made for review of disciplinary actions taken by national securities exchanges. In addition, except as to the NASD, no provision was made for Commission review of summary suspensions or limitations of membership, participation or association, or of denials of membership or association with a member, or prohibitions or limitations of access to services imposed by any SRO.

The 1975 Amendments expanded direct oversight jurisdiction to cover disciplinary sanctions and denials of membership, participation or association imposed by any SRO (including clearing agencies which were, for the first time, required to register). The Act now provides that any SRO taking any such action must file a notice in such form containing such information as is prescribed by rule as necessary or appropriate in the public interest or for the protection of investors. Review of any action requiring the filing of notice may be had either on the motion of the appropriate regulatory agency (the Commission, except with respect to bank participants in clearing agencies) or on application of any person aggrieved by such action. On the other hand, appeals taken to the Commission do not automatically stay any action, as previously was the case in appeals to the Commission from NASD action, although stays may be granted where appropriate.

Furthermore, the 1975 Amendments grant specific authority, under certain circumstances, to any SRO to take summary action against members, participants or associated persons where such persons or associates have been suspended or expelled from membership or participation or barred or suspended from association with a member by another SRO. Any SRO may also summarily suspend a member or participant where the SRO determines that the member or participant is in such financial or operational difficulty so as to endanger investors, creditors, members of or participants in the SRO, or the SRO.

Finally, the 1975 Amendments introduced the concept of a "statutory disqualification." A person is subject to a statutory disqualification if such person:

1. Has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any SRO;

2. Is subject to an order of the Commission denying, suspending or revoking his registration as a broker, dealer or municipal securities dealer or barring his association with a broker, dealer or municipal securities dealer;

3. By his conduct while associated with a broker, dealer or municipal securities dealer has been found to be the cause of any effective suspension or expulsion; or has associated with him any person who is known, or in the exercise of reasonable care should be known, to be a disqualified person;

4. Has violated or participated in violating any provisions of the federal securities acts or the rules of the Municipal Securitiese Rulemaking Board;

5. Has been convicted within the past ten years of any felony or misdemeanor which involves certain crimes relating, generally, to securities transactions or business, perjury or the misappropriation of funds or securities;

6. Is enjoined from any action, conduct or practice in connection with the securities industry or the purchase or sale of any security; or

7. Has willfully made application or submitted a report containing a false or misleading statement with respect to any material fact or omitted to state any material fact which is required to be stated to an SRO.

A statutory disqualification does not necessarily bar the person from membership or participation in an SRO. It permits the SRO to deny or condition or condition the membership or participation or association with a member of such a person, but the Act requires the SRO to take such action if the Commission so orders. An SRO proposing to admit to membership, participation or association a person subject to a statutory disqualification must give notice to the Commission 30 day prior to such action.

DISCUSSION OF PROPOSED RULES

The notice provisions contained in proposed Rule 19d-1 require certain notices by SRO's, including national securities

exchanges, registered securities associations, and registered (non-bank) clearing agencies. However, proposed Rules 19d–2 and 3, relating to stays of final disciplinary sanctions and summary actions and review of final disciplinary sanctions, apply to any action taken by an exchange or association and to action taken by a clearing agency only to the extent that the Commission has review jurisdiction, that is, where the Commission is the "appropriate regulatory agency" for the person concerned. Thus, in cases where a bank is a participant in a registered bank clearing agency, a Federal bank regulatory agency rather than the Commission would be the appropriate regulatory agency to review the actions taken by such clearing agency.

PROPOSED RULE 19d–1

Proposed Rule 19d–1 provides for the content of notices relating to four general types of adjudicatory actions taken by an SRO,[3] as follows:

1. Notice of Final Disciplinary Action: Rule 19d–1(c) and (d);

2. Notice of Final Denial, Bar, Prohibition, Termination or Limitation Based on Qualification or Administrative Rules: Rule 19d–1(e) and (f);

3. Notice of Final Action Based on a Statutory Disqualification: Rule 19d–1 (g) and (h); and

4. Notice of Summary Suspension of Membership, Participation, or Association or Summary Limitation or Prohibition of Access to Services: Rule 19d–1(i).

Proposed Rule 19d–1 is based in large part on the informal procedures the Commission has developed in its oversight of the NASD in the past and was drafted with several objectives in mind. The first was to obtain a report from the SRO's which would contain the organization's statements in compliance with Sections 6(c) (15 U.S.C. 78f(c)) and (d) (15 U.S.C. 78f(d)), 15A(g) (15 U.S.C. 78o–3(g)) and (h) (15 U.S.C. 78o–3(h)) and 17A(b)(4) (15 U.S.C. 78q–1(b)(4)) of the Act. These sections require that disciplinary sanctions, denials of membership, participation or association and similar adjudicatory findings include supporting statements of the SRO. The second objective was to satisfy, at the same time, the requirement of section 19(d) (15 U.S.C. 78s(d)) that such actions be promptly reported to the Commission pursuant to Commission rule.

The third objective was to ensure that such reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission not merely to determine whether the case should be called up for review on the Commission's own motion (which it is empowered to do under section 19(d)(2)), but also to ascertain generally whether the SRO was adequately carrying out its responsibilities under the Act. For the latter purpose, the Commission may review the matter to determine, for example, in the case of a disciplinary action (paragraphs 19d–1(d)(2) through (5) of the proposed rule) whether the sanctions are adequate or excessive;[4] whether the Act, Commission rules, and the SRO rules are being properly interpreted and implemented by the SRO; and whether further direct action, such as a Commission enforcement proceeding under sections 15(b) (15 U.S.C. 78o(b)) and 19(h) (15 U.S.C. 78s(h)), or the adoption of additional or modified rules by the SRO or the Commission, is in order.

The informal reports of disciplinary actions the Commission has been obtaining from the NASD have been developed over the years with these objectives in mind. These reports have been in the form of administrative decisions similar to Commission decisions in broker-dealer remedial proceedings under section 15 of the Act. Rule 19d–1 would continue that practice on a formal basis and extend it to the exchanges and clearing agencies for which the Commission is the appropriate regulatory agency.

In addition, these formal, reasoned opinions have been obtained not only for NASD cases where findings of violations were made and sanctions imposed, but also for proceedings where charges were dismissed and no action taken. While section 19(d)(1) of the Act appears to require the SRO to report only proceedings in which sanctions were imposed, proposed Rule 19d–1 would require SRO's to file notices of both the imposition of sanctions as well as the dismissal of charges.[5] Reports of the latter cases have been demonstrably valuable to the Commission in overseeing NASD regulatory performance.[6]

For similar reasons, "disciplinary actions" include ((for reporting purposes) other kinds of adjudicatory action which, while not treated by the Act in precisely the same framework as disciplinary matters are, as a practical matter, quite similar. Thus, for example, "denial" proceedings contemplated by sections 6(c)(2) and 15A(g)(2)[7] under which a member or associated person is excluded or restricted on the basis of a violation of just and equitable principles of trade and a finding of "reasonable likelihood" of repetition would be reported to the Commission under the proposed rule in essentially the same format as disciplinary actions against members, associated persons of members, etc.[8]

The basic objectives of the reporting requirements for other categories of adjudicatory actions are essentially the same as those for disciplinary actions; but the proposed formats for such reports, particularly as to their contents, are different in certain important respects, primarily because the proceedings themselves are quite different. For example, where a proceeding is based upon a previously adjudicated disqualification (such as a conviction or Commission order of revocation) and results in a denial of membership, participation, association or access, again, based on Commission experience with such types of proceedings before the NASD, the SRO's report can be expected usually to reflect the results of a probationary type hearing. Therefore, the decisional report required for Commission review (proposed Rule 19d–1 (g) and (h), both from the appellate and oversight viewpoints, generally should not look like a disciplinary decision. Nevertheless, in both types of situations the Commission's oversight objectives would best be served by a reasoned, written opinion as a basis for review and proposed Rule 19d–1 so provides.

Reports of denials based on a failure to meet minimum qualification standards (proposed Rule 19d–1(e)), such as a failure to pass an examination, also introduce some special or unique needs in regard to reporting requirements. These actions are not disciplinary in nature and generally involve simple fact questions. Further, the SRO should normally have no discretion as to the action it will be required to take.[9] A separate type of report for such actions, which need not be in the form of a reasoned opinion, would therefore be sufficient.

Similarly, as to the fourth type of notice covered by proposed Rule 19d–1, no-

[3] The Rule would coordinate such notices with proposed Rule 19h–1 procedures for obtaining relief from statutory disqualifications.

[4] The Commission does not have jurisdiction to increase sanctions in the cases it reviews. It may only affirm or lessen the sanction. See section 19(e)(2) (15 U.S.C. 78s(e)(2)) of the Act.

[5] Because of this difference between the statutory provisions and the scope of Commission oversight requirements, it has been necessary in proposed Rule 19d–1 to include the concept of "disciplinary actions." Reports of dismissals would be obtained pursuant to the Commission's power under section 17(a) to require reports from SRO's (and others).

[6] Subparagraph (d)(2) of the proposed rule would require that the notice include a statement describing the origin of the action. The term "origin" would include such detection mechanisms as a regular or special inspection, public complaint, notice of termination of employment filed by a member, free riding questionnaire, etc. Although this item is also not in response to a statutory requirement, it is included since, in the Commission's oversight of the various SRO's such information, which the NASD has long included in its reports to the Commission, should provide useful insight into the adequacy of the SRO's surveillance and inspection programs.

[7] A somewhat similar provision as to a registered clearing agency is found in section 17A(b)(4)(A), which provides that such agency may deny participation to any person subject to a statutory disqualification, but, in contrast to sections 6(c)(2) and 15A(g)(2), does not provide for a denial of participation where a person associated with a participant is subject to a statutory disqualification.

[8] Similar considerations are applicable to denial proceedings based on unadjudicated "statutory disqualifications" of the kind described in 3(a)(39) (D) and (E) (except that part of (E) relating to prior convictions).

[9] *E.g.*, if an individual fails to pass an examination, he usually cannot be admitted to association with a member under any condition; if entry fees are not paid by the applicant, the application must be denied.

tices of sumary suspensions (paragraph 19d–1(i) of the proposed rule), a relatively brief report is required containing just enough information so that if a Commission stay is sought, the Commission has sufficient basic information to focus on the situation in an expeditious fashion.

In addition to the notices (or reports) required by proposed Rule 19d–1, the Federal bank regulatory agencies may require similar reports of registered bank clearing agencies in some cases where the Commission has review authority.[10] Since under sections 17(c)(1) and 19(d)(1) of the Act copies of such reports will be furnished to the Commission, no substantial administrative problem should arise from that division of authority.[11]

PROPOSED RULES 19d–2 AND 19d–3

The provisions of proposed Rules 19d–2 and 3, which set forth certain Commission review procedures and are not reporting rules as such, are specifically not applicable to actions over which the Commission does not have review jurisdiction. Thus, those rules would apply in the case of a bank or non-bank clearing agency only where the disciplinary denial action is taken against a participant or applicant for which the Commission is the appropriate regulatory agency.

Proposed Rule 19d–2 prescribes the contents of applications for stays of disciplinary sanctions or summary suspensions by an SRO. Persons desiring to stay SRO actions (including those of the NASD) would be required to make application pursuant to this rule. The 1975 Amendments abrogated the automatic stay provisions for NASD disciplinary actions which section 15A(g) of the Act previously provided and they may now become effective upon the date set by the SRO unless the Commission orders a stay.

Proposed Rule 19d–3 provides procedures for applications for review of all final disciplinary sanctions, membership denials, and similar actions of SRO's. The Secretary of the Commission will serve a copy of the application for review on the SRO which, within 10 days, must certify and file with the Commission one copy of the record and three copies of an index of the record. The Secretary will then serve on the parties copies of the index and any papers subsequently filed. The applicant may file a brief within 20 days after receipt of the copy of the index and, within 20 days thereafter, the SRO shall file its brief. Oral argument may be requested by the applicant or the SRO which request may be granted or denied in the discretion of the Commission. These procedures are essentially the same as those found in present Rule 15Ag–1 (as to the NASD), which is proposed to be rescinded.

PROPOSED RULE 19h–1

Prposed Rule 19d–1 excludes from its scope (in paragraph (a)) notice of an SRO action to condition or limit membership, participation or association with a member or access to services based upon a statutory disqualification, as defined in section 3(a)(39) of the Act, where the SRO and the parties involved have agreed on the conditions or limitations. Such notices would have to be filed under Rule 19h–1. This separate treatment of such actions is proposed to be required since, as has been past practice with the NASD (see present Rule 15Ab–1, which proposed Rule 19h–1 would replace), all of these matters would be reviewed by the Commission (for all SRO's) on the merits, and not merely where an appeal had been taken from the SRO action or the Commission called up the matter. Thus, Rule 19h–1, which would establish that review mechanism, would require the immediate submission of the full record in the proceeding before the SRO in all such instances and not simply an initial, summary report of action (or proposed action) as in other kinds of adjudications.[12]

Paragraph (a) of proposed Rule 19h–1 requires the filing of the notice and supporting record of the proposed admission or continuance, but paragraph (b) provides that after the first filing of such notice by any SRO, a second notice respecting the same proposed employment need not be filed by another SRO if the second SRO agrees with the terms and conditions of the notice filed by the first SRO.

Paragraph (c) sets forth the contents of the notice of admission or continuance and includes, among other things, a provision (subparagraph (6)) calling for identification of any other interested SRO which has indicated its agreement with the terms and conditions of the proposed admission or continuance, thus providing the basis for an administrative procedure for specifically alerting the other SRO's involved to the notice and giving to the Commission an indication of the acquiescence of such SRO's, if they concur in the proposal. Paragraphs (b) and (c)(6) are intended to permit avoidance of duplicate proceedings before interested SRO's.

Paragraph (d) provides generally that, at the time of the filing of a notice, an application may be made directly to the Commission for an order stating that the Commission will not proceed under section 15(b) or 19(h), notwithstanding the disqualification.[13]

The notice provisions of sections 6(c)(2), 15A(g)(2), and 17A(b)(4)(A) of the Act (which Rule 19h–1 would implement in part) specifically require notices (at least 30 days in advance) to the Commission respecting only proposed admissions of disqualified persons by SRO's; in contrast, paragraph (a) of the proposed Rule requires the filing of a notice not only where the SRO has determined to admit a disqualified person seeking entry or re-entry, but also where the SRO proposes to continue a disqualified person in membership or association. The reason for this is that, in either type of situation, the Commission, depending upon the nature of the disqualification, may have independent authority under section 15(b) or 19(h) effectively to prevent the admission or continuance and will need to have the information called for in the notice to determine if it wishes to exercise that power.

Paragraph (e) describes the contents of the application made pursuant to paragraph (d) and paragraph (f) is definitional.

Finally, paragraphs (g) and (h) set forth the procedures for Commission consideration of a paragraph (d) application.

PUBLIC DISCLOSURE OF SRO ADJUDICATORY PROCEEDINGS

Before the enactment of the 1975 Amendments, there were no Commission rules or procedures (except in the case of appeals from NASD disciplinary actions) governing disclosure to the public of the details concerning individual disciplinary actions taken by self-regulatory organizations. Reports of such actions have long been furnished to the Commission informally but the Commission generally respected the wishes and internal policies of the SRO's with regard to the public (or non-public) treatment of their proceedings.

During the legislative hearings and investigations that led eventually to the passage of the 1975 Amendments, the Congressional Committees addressed themselves to that disclosure question. As noted above, new section 19(d)(1) provides for the filing of reports of the self-regulatory adjudicatory proceedings with the Commission, and new section 24 (15 U.S.C. 78x) provides that, for purposes of the Freedom of Information Act, Commission "records" include "all * * * reports * * * and other documents filed

[10] Under section 19(d)(1), the appropriate Federal bank regulatory agencies are directed to prescribe the form of notice for disciplinary and denial actions of bank clearing agencies against non-bank participants, where the Commision has appellate jurisdiction.

[11] Section 17A(d)(3)(A)(i) requires that the Commission and the bank regulatory agencies consult with and request the views of the other agencies "at least fifteen days prior to the issuance for public comment of any proposed rule" or adoption of any rule relating to a bank clearing agency.

[12] Proposals by SRO's for admissions or continuance in business of disqualified persons previously were submitted only by the NASD pursuant to current Rule 15Ab–1. Such actions may now be proposed by any SRO, including an exchange or clearing agency. Before the 1975 Amendments there were no specific statutory provisions relating to Commission oversight of the exchanges and exchange clearing agencies in this area.

[13] Section 15(b) (15 U.S.C. 780(b)) of the Act empowers the Commission to impose sanctions, including revocation of broker-dealer registration, on any person who has been found to have committed certain offenses (as set forth in paragraph (4) or (6) of that Section), which findings are included within those constituting a "statutory disqualification" (as defined in section 3(a)(39) (15 U.S.C. 78c(39))) from SRO membership or association. In addition, Section 19(h) (15 U.S.C. 78s(h)) empowers the Commission to suspend or bar persons from SRO membership or association based on similar types of findings.

with or otherwise." These provisions were derived from S. 249, and the report of the Senate Committee accompanying that bill, in commenting on the proposed procedural aspects of the various types of SRO adjudicatory proceedings, states: [34]

With respect to all three types of quasi-adjudicatory self-regulatory proceedings—the disciplining of a member, the denial of membership, and the limitation or prohibition of a person's access to requested services—the Committee believes that final action should be open to public scrutiny. As the SEC's Advisory Committee on Enforcement Policies and Practices has pointed out:

"The absence of adequate publicity concerning disciplinary proceedings conducted by the self-regulatory organizations tend to diminish public and investor confidence in the efficacy of self-regulatory and lessens the value of these proceedings as a means of establishing guidelines for the conduct of their members. Unlike the Commission, these organizations do not publicize findings of violations in all cases, and in proceedings that are publicly disclosed the release generally contains only a summary description of the violation and the sanction imposed. The Committee recommends that the Commission request the self-regulatory organizations to reconsider their policies governing the publicity given to disciplinary proceedings.

We believe that in order for these organizations to play an effective, coordinate role in the self-regulatory system, their procedures and the standards on which their decisions are based should be opened to public scrutiny."

The Committee agrees with the Advisory Committee's conclusion, but it also believes that full and adequate disclosure of quasi-adjudicatory actions is a matter of sufficient importance not to be left to the "reconsideration" of the self-regulatory agencies. Accordingly, Section 19(d) would require the self-regulatory organizations to file with the appropriate regulatory agency for the self-regulatory organization, and with the appropriate regulatory agency for the member, participant, applicant or other person affected (if other than the appropriate regulatory agency for the self-regulatory organization), notice of all final quasi-adjudicatory actions affecting members and non-members. That agency would have the power to prescribe the information to be included in the notices, and *it would be required to make all notices available for public inspection.* [Emphasis supplied.]

In light of this statement of legislative intent and Congressional policies incorporated in recent amendments to the FOIA, all reports filed with the Commission pursuant to these proposed rules which contain findings of violations or other failures to comply with applicable requirements of the Act, rules and regulations thereunder, or rules of the SRO's would be maintained in Commission files that would be available for public inspection. However, the Commission still has under consideration whether reports where no violation or failure to comply with applicable requirements has been found should be publicly available, although the Commission would consider "nonadverse" reports in the course of its continuing oversight of SRO's The Commission would welcome comments on this question.

Proposed Securities Exchange Act Rules 19d–1, 19d–2, 19d–3 and 19h–1 would be adopted under the Act and particularly sections 6, 15A, 17, 17A, 19 and 23 thereof. The proposed rules are as follows:

§ 240.19d–1 Notices by self-regulatory organizations of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation, or access to services, and summary suspensions.

(a) *General.* If any self-regulatory organization for which the Commission is the appropriate regulatory agency takes any action described in this rule to which the person affected thereby has consented and such action—

(1) Conditions or limits membership or participation in, association with a member of, or access to services offered by, such organization or a member thereof and

(2) Is based upon a statutory disqualification defined in section 3(a)(39) of the Act,

notice thereof shall be filed under Rule 19h–1 and not under this rule.

(b) The notice requirement of section 19(d)(1) of the Act, concerning an action subject to such section taken by a self-regulatory organization for which the Commission is the appropriate regulatory agency, shall be satisfied by any notice with respect to such action (including a notice filed pursuant to this rule) which contains the information required in the statement supporting the organization's determination required by section 6(d)(1) or (2), section 15A(h)(1) or (2), or section 17A(b)(5)(A) or (B) of the Act, as appropriate.

(c) *Notice of final disciplinary action.* Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final disciplinary action with respect to any person shall promptly file a notice thereof with the Commission in accordance with paragraph (d) of this section. For the purposes of this rule, a "final disciplinary action" shall mean the imposition of any final disciplinary sanction pursuant to section 6(b)(6), 15A(b)(7), or 17A(b)(3)(G) of the Act or other action of a self-regulatory organization which, after notice and opportunity for hearing, results in any final disposition of charges of:

(1) One or more violations of—

(i) The rules of such organization;

(ii) The provisions of the Act or rules thereunder; or

(iii) In the case of a municipal securities broker or dealer, the rules of the Municipal Securities Rulemaking Board;

(2) Acts or practices constituting a statutory disqualification of a type defined in subparagraph (D) or (E) (except prior convictions) of section 3(a)(39) of the Act; or

(3) In the case of a proceeding by a national securities exchange or registered securities association based on section 6(c)(3)(A)(ii), 6(c)(3)(B)(ii), 15A(g)(3)(A)(ii), or 15A(g)(3)(B)(ii) of the Act, acts or practices inconsistent with just and equitable principles of trade.

(d) *Contents of notice required by paragraph (c).* Any notice filed pursuant to paragraph (c) of this section shall consist of the following, as appropriate:

(1) The name of the respondent concerned together with his last known place of residence or business as reflected on the records of the self-regulatory organization and the name of the person, committee, or other organizational unit which brought the charges involved;

(2) A statement describing the investigative or other origin of the action;

(3) As charged in the proceeding, the specific provisions of the Act, the rules or regulations thereunder, the rules of the organization, and, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board, and, in the event a violation of other statutes or rules constitutes a violation of any rule of the organization, such other statutes or rules; and the answer of the respondent to the charges.

(4) A statement setting forth findings of fact with respect to any act or practice which such respondent was charged with having engaged in or omitted; the conclusion of the organization as to whether such respondent is deemed to have violated any provision covered by the charges; and a statement of the organization in support of the resolution of the principal issues raised in the proceedings;

(5) A statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction has or will become effective, together with a finding, if appropriate, as to whether such respondent was a cause of any sanction imposed upon any other person;

(6) A statement concerning whether any stay of any sanction imposed should be granted, pending final determination on review thereof by the Commission, if any person aggrieved thereby applies for such review; and

(7) Such other matters as the organization may deem relevant.

(e) Notice of final denial, bar prohibition, termination or limitation based on qualification or administrative rules. Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final action with respect to any person constituting a denial, bar, prohibition, or limitation of membership, participation or association with a member, or of access to services offered by a self-regulatory organization or a member thereof, and which is based on an alleged failure of any person to:

(1) Pass any test or examination required by the rules of the Commission or such organization;

(2) Comply with other qualification standards established by rules of the Commission or such organization; or

(3) Comply with any administrative requirements of such organization (including failure to pay entry or other dues

[34] Securities Acts Amendments of 1975. Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 26 (1975).

or fees or to file prescribed forms or reports) not involving charges of violations which may lead to a disciplinary sanction

shall not be considered a "disciplinary action" for purposes of paragraph (c) of this section; but notice thereof shall be promptly filed with the Commission in accordance with paragraph (f) of this section, *provided, however,* that no disposition of a matter shall be considered "final" pursuant to this paragraph which results merely from a notice of such failure to the person affected, if such person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies within such organization with respect to such a matter.

(f) *Contents of notice required by paragraph (e).* Any notice filed pursuant to paragraph (e) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned together with his last known place of residence or business as reflected on the records of the organization;

(2) The specific provisions of the Act, the rules or regulations thereunder, the rules of the organization, and, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board, upon which the action of the organization was based; and the answer of the person concerned;

(3) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to pass any required examination, comply with other qualification standards, or comply with administrative obligations, and a statement of the organization in support of the resolution of the principal issues raised in the proceeding;

(4) The date upon which such action has or will become effective; and

(5) Such other matters as the organization deems relevant.

(g) *Notice of final action based upon prior adjudicated statutory disqualifications.* Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final action with respect to any person which:

(1) Denies or conditions membership or participation in or association with a member of such organization or prohibits or limits access to services offered by such organization or a member thereof; and

(2) Is based upon a statutory disqualification of a type defined in subparagraph (A), (B), or (C) of section 3(a)(39) of the Act or consisting of a prior conviction, as described in subparagraph (E) of said section 3(a)(39)

shall promptly file a notice of such action with the Commission in accordance with paragraph (h) of this section, *provided, however,* that no disposition of a matter shall be considered "final" pursuant to this paragraph where such person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies within such organization with respect to such a matter.

(h) *Contents of notice required by paragraph (g).* Any notice filed pursuant to paragraph (g) of this section shall consist of the following, as appropriate:

(1) The name of the person concerned, together with his last known place of residence or business, as reflected on the records of the organization;

(2) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the organization in support of the resolution of the principal issues raised in the proceeding;

(3) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(4) Any description furnished by or on behalf of the person concerned of the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person;

(5) A copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such statutory disqualification;

(6) The nature of the action taken and the date upon which such action is to be made effective; and

(7) Such other matters as the organization deems relevant.

(i) *Notice and contents of notice of summary suspension of membership, participation, or association, or summary limitation or prohibition of access to services.* If any self-regulatory organization for which the Commission is the appropriate regulatory agency summarily suspends a member, participant, or person associated with a member, or summarily limits or prohibits any person with respect to access to or services offered by the organization or (in the case of a national securities exchange or association) a member thereof pursuant to the provisions of section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act, such organizations shall, within 24 hours of the effectiveness of such summary suspension, limitation or prohibition notify the Commission of such action, which notice shall contain at least the following information:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the records of the organization;

(2) The date upon which such summary action has or will become effective;

(3) If such summary action is based upon the provisions of section 6(d)(3)(A), 15A(h)(3)(A), or 17A(b)(5)(C)(i) of the Act, a copy of, or an appropriate citation to, the relevant order or decision of the self-regulatory organization;

(4) If such summary action is based upon the provisions of section 6(d)(3)(B) or (C), 15A(h)(3)(B) or (C), or 17A(b)(5)(C)(ii) or (iii) of the Act, a statement describing, as appropriate:

(i) The default of any delivery of funds or securities to any clearing facility upon which such organization determined that such suspension was necessary for, or the member could not be permitted to continue to do business with, safety to such organization, investors, creditors or members of or participants in the organization;

(ii) The financial or operating difficulty of the member or participant upon which such organization determined that the member or participant could not be permitted to continue to do business with safety to investors, creditors or other members of or participants in the organization; or

(iii) The failure to meet qualification requirements or other prerequisites for access and the basis upon which such organization determined that the person concerned could not be permitted to continue to have access with safety to investors, creditors, the organization, or members of the organization.

(5) The nature and effective date of the suspension, limitation or prohibition; and

(6) Such other matters as the organization deems relevant.

§ 240.19d–2 Applications for stays of disciplinary sanctions or summary suspensions by a self-regulatory organization.

If any self-regulatory organization imposes any final disciplinary sanction pursuant to section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Act, or summarily suspends or limits or prohibits access pursuant to section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act, any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Commission, by telegram or otherwise, a request for a stay of imposition of such action. Such request shall be in writing and shall include a statement as to why such stay should be granted.

§ 240.19d–3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.

(a) Proceedings on an application to the Commission under section 19(d)(2) of the Act for review of any final disciplinary sanction, denial or conditioning of membership or participation, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be governed by this rule.

(b) An application for review pursuant to section 19(d)(2) of the Act shall be filed with the Commission within 30 days after notice thereof was filed pursuant to section 19(d)(1) of the Act and received by the aggrieved person applying for review, or within such longer period as the Commission may determine. The Secretary of the Commission shall serve a copy of the application on the self-regulatory organization, which shall, within ten days after receipt of the application, certify and file with the Commission one copy of the record upon

which the action complained of was taken, together with three copies of an index to such record. The Secretary shall serve upon the parties copies of such index and any papers subsequently filed.

(c) Within 20 days after receipt of a copy of the index, the applicant shall file a brief or other statement in support of his application which shall state the specific grounds on which the application is based, the particular findings of the organization to which objection is taken, and the relief sought. Any application not perfected by such timely brief or statement may be dismissed as abandoned.

(d) Within 20 days after receipt of the applicant's brief or statement the organization may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply. Any such papers not filed within the time provided by paragraphs (b), (c) or (d) of this section will not be received except upon special permission of the Commission.

(e) On its own motion, the Commission may direct that the record under review be supplemented with such additional evidence as it may deem relevant. Nevertheless, the self-regulatory organization and persons who may be aggrieved by its action shall be obliged to adduce all evidence that they deem relevant in the proceedings before the organization, and no such person shall be entitled to adduce additional evidence unless he shows to the satisfaction of the Commission that such additional evidence is material and that there were reasonable grounds for his failure to adduce such evidence in such proceedings. Any request for leave to adduce additional evidence shall be filed promptly so as not to delay the disposition of the proceeding.

(f) Oral argument before the Commission may be requested by the applicant or the organization as follows: (1) By the applicant with his brief or statement or within 10 days after receipt of the organization's answer, or (2) by the organization with its answer. The Commission, in its discretion, may grant or deny any request for oral argument and, where it deems it appropriate to do so, the Commission will consider an application on the basis of the papers filed by the parties, without oral argument.

(g) The rules of practice shall apply to review proceedings under this rule to the extent that they are not inconsistent with this rule. Attention is directed particularly to Rule 22 of the rules of practice relating to the form of papers and number of copies to be filed.

§ 240.19h–1 Notice by a self-regulatory organization of proposed admission to or continuance in membership or participation or association with a member of any person subject to a statutory disqualification and applications to the Commission for relief therefrom.

(a) *Notice of admission or continuance notwithstanding a statutory disqualification.* Any self-regulatory organization proposing, conditionally or unconditionally, to admit or continue any person in membership or participation or (in the case of a national securities exchange or registered securities association) association with a member, notwithstanding a statutory disqualification as to such person defined in section 3(a)(39) of the Act, shall file a notice with the Commission of such proposed admission or continuance. If such person has not consented to such proposal, notice of the organization's action shall be filed pursuant to Rule 19d–1 under the Act and not under this Rule.

(1) The notice requirements of section 6(c)(2), 15A(g)(2), 17A(b)(4)(A) or 19(d)(1) of the Act concerning an action of a self-regulatory organization subject to one (or more) of such sections and this paragraph shall be satisfied by a notice with respect to such action filed in accordance with paragraph (c) of this section.

(b) *Subsequent notices.* If a notice has been previously filed pursuant to this rule by a self-regulatory organization, any other such organization need not file a separate notice pursuant to this rule with respect to the same matter if such other organization agrees with the terms and conditions of the notice so filed.

(c) *Contents of notice of admission or continuance.* A notice filed with the Commission pursuant to paragraph (a) of this section shall contain the following:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the records of the organization;

(2) The basis for any such disqualification from membership, participation or association including (if based on a prior adjudication) a copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such disqualification;

(3) In the case of an admission, the date upon which it is proposed by the organization that such membership, participation or association shall become effective, which shall not be less than 30 days from the date upon which the Commission receives the notice;

(4) A description by or on behalf of the person concerned of the activities engaged in by the person since the disqualification arose, the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over by such person;

(5) If a hearing on the matter has been held by the organization, a certified record of the hearing together with copies of any exhibits introduced therein;

(6) An identification of any other self-regulatory organization which has indicated its agreement with the terms and conditions of the proposed admission or continuance; and

(7) Such other matters as the organization or person deems relevant.

If the notice contains assertions of material facts not a matter of record before the self-regulatory organization, such facts shall be sworn to by affidavit. The notice may be accompanied by a brief.

(d) *Application to the Commission for relief from certain statutory disqualifications.* The filing of a notice pursuant to paragraph (a) of this section shall neither affect nor foreclose any action which the Commission may take with respect to such person pursuant to the provisions of section 15(b) or 19(h) of the Act or any rule thereunder. Accordingly, a notice filed pursuant to paragraph (a) of this section with respect to the membership, participation, or association of any person subject to an "applicable disqualification," as defined in paragraph (f) of this section, may be accompanied by an application by or on behalf of the person concerned to the Commission for an order declaring, as applicable, that notwithstanding such disqualification, the Commission:

(1) Will not institute proceedings pursuant to section 15(b)(1)(B), 15(b)(4), 15(b)(6) or 19(h)(2) or (3) of the Act if such person seeks to obtain or continue registration as a broker or dealer or association with a broker or dealer so registered, or membership or participation in a self-regulatory organization;

(2) Will not direct otherwise, as provided in section 6(c)(2), 15A(g)(2) or 17A(b)(4)(A) of the Act; and

(3) Will deem such person qualified pursuant to Rule 15b8–2 (17 CFR 240.15b8–2) under the Act.

The Commission may, in its discretion and subject to such terms and conditions as it deems necessary, issue such an order if it find it appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(e) *Contents of application to the Commission.* An application to the Commission pursuant to paragraph (d) of this rule shall consist of the following, as appropriate:

(1) The name of the person subject to the disqualification together with his last known place of residence or business as reflected on the records of the organization;

(2) A copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such "applicable disqualification;"

(3) The nature of the relief sought and the reasons therefor;

(4) A description of the activities engaged in by the person since the disqualification arose;

(5) A description of the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person;

(6) If a hearing on the matter has been held by the organization, a certified copy of the hearing record, together with copies of any exhiibts introduced therein;

(7) And such other matters as the organization or person deems relevant.

If the application contains assertions of material facts not a matter of record before the organization, such facts shall be sworn to by affidavit. The application may be accompanied by a brief. If

any information called for in this paragraph is already contained in an application filed with the Commission in accordance with paragraph (b) of Rule 15b8–2 under the Act concerning the same proposed employment, such information may be incorporated by reference in the application pursuant to this Rule.

(f) *Definition of "applicable disqualification".* For purposes of this Rule, the term "applicable disqualification" shall mean:

(1) Any effective order of the Commission pursuant to section 15(b) (4) or (6) or 19(h) (2) or (3) of the Act—

(i) Revoking, suspending or placing limitations on the registration, activities, functions, or operations of a broker or dealer;

(ii) Suspending, barring, or placing limitations on the association, activities, or functions of an associated person of a broker or dealer;

(iii) Suspending or expelling any person from membership or participation in a self-regulatory organization; or

(iv) Suspending or barring any person from being associated with a member of a national securities exchange or registered securities association; or

(2) Any conviction or injunction of a type described in section 15(b)(4) (B) or (C) of the Act.

(g) Where it deems it appropriate to do so, the Commission may grant or deny an application filed pursuant to paragraph (d) of this section on the basis of the papers filed by the parties, without oral hearing. Any request for oral hearing or argument should be submitted with the application.

(h) The rules of practice shall apply to proceedings under this Rule to the extent that they are not inconsistent with this Rule. Attention is directed particularly to Rule 22 of the rules of practice relating to form of papers and number of copies to be filed.

Interested persons are invited to submit their comments on the proposed rules in writing before July 30, 1976. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to file number S7–640, and will be available for public inspection in the Commission's Public Reference Room, 1100 "L" Street, N.W., Washington, D.C.

By the Commission,

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76–18881 Filed 6–29–76;8:45 am]

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WEDNESDAY, JUNE 30, 1976



PART V:

ENVIRONMENTAL PROTECTION AGENCY

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WATER PROGRAM

Benzidine: Proposed Toxic Pollutant Effluent Standards

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 129]

[FRL 564-4]

WATER PROGRAM

Benzidine; Proposed Toxic Pollutant Effluent Standards

Notice is hereby given that the Environmental Protection Agency, pursuant to the authority contained in section 307(a) of the Federal Water Pollution Control Act (the Act) as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 86 Stat. 816, (33 U.S.C. 1251 *et seq.*)), proposes additional sections to Part 129, setting forth proposed effluent standards for benzidine. On June 10, 1976, the Agency proposed a new Part 129, setting forth proposed effluent standards for the following toxic pollutants: aldrin/dieldrin, DDT (DDD, DDE), endrine and toxaphene, 41 FR 23576. Those four pollutants, as well as benzidine, were included on a list of toxic pollutants previously published by the Agency pursuant to section 307(a)(1), 38 FR 24342 *et seq.* (September 7, 1973).

Section 307(a)(2) of the Act provides as follows:

> Within one hundred and eighty days after the date of publication of any list, or revision thereof, containing toxic pollutants or combination of pollutants under paragraph (1) of this subsection, the Administrator, in accordance with section 553 of title 5 of the United States Code, shall publish a proposed effluent standard (or prohibition) for such pollutant or combination of pollutants which shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters,t he importance of the affected organisms and the nature and extent oft he effect of the toxic pollutant on such organisms, and he shall publish a notice for a public hearing on such proposed standard to be held within thirty days. As soon as possible after such hearing, but not later than six months after publication of the proposed effluent standard (or prohibition), unless the Administrator finds, on the record, that a modification of such proposed standard (or prohibition) is justified based upon a preponderance of evidence adduced at such hearings, such standard (or prohibition) shall be promulgated.

The regulations proposed at this time establish effluent standards for benzidine-based dye manufacturers, and manufacturers of paper goods, leather goods and textile goods who utilize benzidine-based dyes in their production or processes. Standards are proposed for both existing and new sources.

The following, together with the materials and information hereinafter referred to and incorporated by reference, sets forth the statement of basis and purpose of the effluent standards proposed at this time.

Summary of Principal Features and Benefits of the Proposed Regulations

The regulations herein proposed would establish effluent standards for all manufacturers of benzidine and benzidine-based dyes and the principal applicators, or users, of benzidine-based dyes, who discharge directly into the navigable waters. Standards are established for both existing and new sources. Owners and operators of facilities which discharge into publicly owned treatment works, as defined in section 212 of the Act (sometimes referred to as "indirect dischargers"), are not covered by the standards herein proposed. However, the Agency expects to propose pretreatment standards for such indirect dischargers pursuant to the authority contained in section 307 of the Act in due course.

At the present time the Agency has identified three manufacturers of benzidine and benzidine-based dyes. These are Allied Chemical Co., GAF Corp., and Fabricolor, Inc. There are, in addition, numerous facilities which utilize benzidine-based dyes in their operations. The total market for benzidine dyes in 1973 was approximately 30 million pounds. Of this total market approximately 40 percent of the volume was consumed in the manufacture of paper, 25 percent was consumed by the textile industry, 15 percent was used in connection with the production of leather goods, and the remaining 20 percent was scattered among various other industries. Two of the three benzidine-based dye manufacturers presently discharge into publicly owned treatment works and the third, GAF Corp., will do so as soon as the treatment plant is completed. Thus, GAF is presently the only known manufacturer with a direct discharge.

The manufacturers of paper goods, leather goods, and textile goods are divided between facilities with direct discharges into the navigable waters and those with indirect discharges into publicly owned treatment works. Thus, the regulations proposed today, coupled with the pretreatment standards referenced above, will result in coverage of all existing and new benzidine and benzidine-based dye manufacturing sources, and approximately 80 percent of the known benzidine-based dye applicators.

Benzidine is an organic reagent utilized in the synthesis of dyestuffs and also for clinical dyes. It is a proven carcinogen, primarily inducing cancer to the bladder in humans. Historically, the principal exposure route to humans has been through occupational exposure. However, numerous facilities discharge effluents containing benzidine, thus producing the potential for exposure of human beings through direct contact or eventual ingestion of water which may have become contaminated as a result of such discharges. These facts warrant the establishment of standards under section 307(a) to assure protection of human health and protection for aquatic organisms and others in the food chain.

The proposed standards would establish a maximum allowable direct discharge for any existing or new manufacturer of benzidine or benzidine-based dyes of 0.130 kg benzidine per 1000 kg (kg/kkg) of benzidine produced, calculated on a monthly average. In addition, the average daily concentration of benzidine in discharges calculated over any calendar month may not exceed 10 micrograms per liter ($\mu g/l$), and may at no time exceed 50 $\mu g/l$ in a sample representing any working day. For manufacturers of textile, leather, and paper goods utilizing benzidine-based dye in their processes, the proposed standards would impose a maximum average daily concentration calculated over any calendar month of 10 $\mu g/l$, and a maximum concentration at any time of 25 $\mu g/l$ based on samples or calculations representing any working day. Data available to the Agency indicate that these standards will provide the degree of protection for aquatic and other organisms and human health required by the Act, and are technologically achievable by industry without adverse economic impact.

Few data exist at the present time with respect to the degradation products of benzidine and the toxicity thereof. If such information becomes available which would warrant more stringent standards than those proposed at this time, the Agency will revise any standards promulgated hereunder to provide the appropriate protection pursuant to its authority under section 307(a)(3), which requires that such standards be "reviewed and, if appropriate, revised at least every three years."

I. Background

On July 6, 1973, the Agency published in the Federal Register a proposed list of nine toxic pollutants pursuant to section 307(a)(1) of the Act, 38 FR 18044. The nine substances were aldrin/dieldrin, benzidine, cadmium, cyanide, DDT (DDD, DDE), endrin, mercury, polychlorinated biphenyls, and toxaphene. Following receipt of public comment, the list was promulgated on September 7, 1973, together with a discussion of the Agency's selection criteria and a response to comments received on the proposed list, 38 FR 24342 *et seq.* The promulgated list consisted of the same nine substances previously proposed.

On December 27, 1973, the Agency proposed toxic pollutant effluent standards for each of these nine substances, together with a summary of the factors considered in setting the standards, and a list of point source categories of dischargers proposed for coverage, 38 FR 35388 *et seq.* In accordance with section 307(a)(2) of the Act, a formal rulemaking hearing on the proposed standards was scheduled. A prehearing conference was held on January 25, 1974, followed by a thirty-day evidentiary hearing held during April and May. At the conclusion of those hearings, which were held under severe time constraints, the Agency became aware of problems in the proposed hydrological definitions and of certain gaps in the data base. As a result, the Agency determined at the conclusion of the hearings that the record did not contain sufficient evidence on which to promulgate responsible and defensible standards for any of the substances. Accordingly, the Agency decided to gather additional data and repropose standards, supported by an expanded data base. The present proposed rulemaking therefore

supersedes the proposal of December 27, 1973.

The Agency's decision to gather additional data and to repropose standards was discussed at considerable length in the preamble to the Notice of Proposed Toxic Pollutant Effluent Standards for aldrin/dieldrin, DDT, endrin, and toxaphene, published in the FEDERAL REGISTER on June 10, 1976, 41 FR 23576 to which the reader is referred and which is hereby incorporated by reference.

II. THE PROPOSED STANDARDS

Supporting Information. In developing the standards proposed herein the Administrator has given careful consideration to each of the factors enumerated in section 307(a)(2). These factors include ". . . the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms." In light of the Act's manifest concern for public health, which is reflected in both the statute and the legislative history, the Administrator has also considered available data concerning human health effects attributable to benzidine. The data considered by the Administrator relating to these factors of toxicity and environmental fate and effect are set forth in a Benzidine Criteria Document. The Criteria Document, together with the general introduction to that document, are hereby incorporated by reference as a part of the statement of basis and purpose for the standards hereinafter proposed.

In addition, the Administrator has considered information with respect to present discharge levels and the availability of various methods of control and related technology by which discharge of benzidine might be eliminated or reduced. His authority to consider technology as well as economic impact is discussed in detail in the preamble portion of the Notice of Proposed Toxic Pollutant Effluent Standards published on June 10, 1976, noted previously. In order to obtain relevant data for this function, EPA engaged the services of an outside consultant, Thomas M. Keinath, Ph.D., who is a recognized expert on wastewater treatment technology. Dr. Keinath has prepared and submitted a report to the Agency describing the benzidine manufacturing and benzidine-based dye applicator industries, and examining control technologies which are actually in use or which are or may be available to the industries for whom coverage is proposed under this rulemaking. His report is hereby incorporated by reference as a part of the statement of basis and purpose of the standards herein proposed.

The Agency has also evaluated the economic impact of implementing the technologies identified for achieving the effluent standards for benzidine-based dye manufacturers and users. Since there will be no direct discharges from manufacturers no substantial economic impact is anticipated for that subcategory.

The Agency recognizes that the effluent standard for dye applicators may create a cost burden for monitoring, particularly for the small benzidine-based dye applicator, if compliance cannot be shown by the mass balance approach. Therefore, the Agency solicits public comment and information on defining such cost burdens. The Agency further recognizes that the effluent standard for benzidine-based dye applicators which are new sources may be difficult to meet during the initial plant start-up period. Public comments and information are also solicited on this point.

Copies of the aforesaid criteria document, technology assessment report and supporting materials are available for public inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922, (EPA Library), 401 M Street, S.W., Washington, D.C. 20460 during normal business hours. In addition, copies of the criteria document and technology assessment report may be inspected and copied at similar public information reference units in each of the ten EPA Regional Offices, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia.

Development of the Standards. The general approach used in deriving the proposed benzidine standards is consistent with that used for the previously proposed pesticide effluent standards (see 41 FR 23576). However, application of that approach has resulted in a primary emphasis on protection of human health in light of the known carcinogenicity of benzidine to humans. As noted in the preamble accompanying the promulgation of benzidine as a § 307(a) toxic pollutant, benzidine was included because, "the resulting potential for increased water pollution by this known carcinogen and the adverse effects on the environment which may result, require the listing of benzidine." (38 FR 24343).

Although benzidine exhibits acute toxicity to fish at concentrations in the order of 2 to 10 milligrams per liter (mg/l) and has exhibited bioaccumulation of more than 40 times in fish, current usage and in-place control systems prevent detectable concentrations (normally 0.2 μg/l or greater) of benzidine from occurring in receiving waters. Available studies also indicate that benzidine in low concentrations (in the range of about 50 μg/l or less) disappears from the water column. Because benzidine is rarely if ever discharged in concentrations which approach the levels of acute toxicity to aquatic organisms, and does not appear to be persistent, it is not presently believed to pose a significant threat to aquatic life. The Agency's principal concern with benzidine, therefore, is its potential carcinogenic effects on humans.

GENERAL PROVISIONS

The Notice of Proposed Rulemaking published on June 10, 1976, proposed provisions of general applicability to all standards issued under section 307(a). These were set forth as §§ 129.1 through 129.8. Those Sections as promulgated will be applicable to standards established hereunder for benzidine. Owners and operators of facilities which are or may be subject to the standards proposed herein are expressly referred to that notice of proposed rulemaking for provisions relating to scope and purpose, definitions, abbreviations, compliance procedures (including notification of the Regional Administrator or State Director of an approved NPDES permit program, as appropriate, of any discharge subject to these standards), requirements and procedures for estamlishment of a more stringent effluent limitation than that prescribed in the standards established in these proceedings, and compliance date.

In the Notice of Proposed Toxic Pollutant Effluent Standards published on June 10, 1976, standards were proposed for aldrin/dieldrin, DDT (DDD, DDE), endrin, and toxaphene in §§ 129.100 through 129.103, respectively. The present proposal would add a new § 129.104 containing the effluent standards for benzidine.

The standards proposed in the new § 129.104 provide coverage for new and existing sources in the following industrial categories: manufacturers of benzidine and benzidine-based dyes; manufacturers of paper goods who use any benzidine-based dye in any product or process; manufacturers of leather goods who use any benzidine-based dye in any product or process; and manufacturers of textile goods who use any benzidine-based dye in any product or process. For purposes of these standards, a new source is defined as any source on which construction is begun following the date of proposal of effluent standards, if effluent standards are subsequently promulgated. For purposes of the standards proposed at this time, the determinative date with respect to new sources is the date of this publication.

Each section includes specialized definitions of the point source category covered and prescribe acceptable analytical methods. In addition, provision is made for determination of weights and concentrations. The specific factors considered by the Agency in developing the numerical standards are discussed in the following paragraphs.

(1) *Dye Manufacturing and Dye Applicators; Wastewater Characteristics.* The manufacture of benzidine-based dye is a two-step operation. The first step is the manufacture of benzidine, which is formed from hydrazobenzene. The hydrazobenzene is rearranged to a benzidine salt by the addition of acid. In the second step, which is a separate process, the benzidine salt is subjected to a tetrazotization reaction and is then susceptible for reaction with various chemicals to form the individual dyes. In general, the benzidine salt production and the benzidine-based dye production are performed in separate buildings because of the strict OSHA regulations promulgated for benzidine production facilities.

Each of the three present manufacturers performs both of these steps, and therefore is both a benzidine manufacturer and a benzidine-based dye manufacturer. Benzidine itself is thus manufactured only as an intermediate product in the dye manufacturing process.

The sources of wastewaters in the benzidine manufacturing operation include wash waters from reaction vessels and filters (where used), air pollution scrubber blowdown, worker laundry and shower wastes, and floor washdown waters. These wastes are collected in batch reactor vessels at Allied and GAF for subsequent treatment. These wastes are discharged without any pretreatment at Fabricolor.

Wastewater volumes for the three benzidine-based dye manufacturers have been reported by the Synthetic Organic Chemicals Manufacturers Association (SOCMA) for the benzidine manufacturing portion of the dye making process. It was estimated that Allied Chemical produces 2.64 million gallons of wastewater per year during the manufacture of 1 million pounds of benzidine. The concentration of benzidine in the untreated wastewater has not been determined analytically. GAF produces approximately 78,000 gallons of wastewater per year while manufacturing 140,000 pounds of benzidine. The concentration of benzidine in their raw wastewater has likewise not been determined. Fabricolor produces 760,000 gallons of wastewater per year while manufacturing 60,000 pounds of benzidine. The concentration of benzidine in untreated wastewater from the entire plant (including dye production) has been calculated to be approximately 10 μg/l.

The benzidine-based dye production wastes include the so-called "mother liquor," which is the waste product following the dye extraction and the typical wash waters from equipment and operating areas. The benzidine concentrations in these wastewaters are generally less than the 10μg/l analytical sensitivity using the conventional chloramine T detection method, but occasionally have been found to exceed 100 μg/l based on available analytical results. Both Allied Chemical and GAF mix these wastes with the treated benzidine wastes, and provide some flow equalization and pH adjustment before final disposal.

Benzidine-based dye applicators pose substantially different problems. Dye-related wastewaters do not constitute a large fraction of oxygen demanding wastes in textile, paper or leather plants. Such dye wastes do pose aesthetic problems in receiving waters and under certain conditions may contribute to acute toxicity. A complete description of wastewater characteristics for those industries is available in the "Development Documents" published by EPA in connection with the development of effluent limitations guidelines and new source performance standards for each of those industries under sections 301, 304, and 306 of the Act.

Benzidine concentrations in benzidine-based dye applicator wastewaters can be based on a so-called "mass balance monitoring approach." The mass balance monitoring approach is premised on the dye applicator noting the use of a benzidine-based dye and the accompanying water usage. The operator determines the total volume of waste discharged during the operating day. The concentration is calculated by dividing the maximum amount of benzidine potentially present (provided on the manufacturers label) by the total volume of water used during the working day. This method is justified because typically the facilities providing treatment have hydraulic detention times in excess of an operating day. The facilities thus act as equalization basins and dampen concentration variations. In comparisons with actual analytical results, the concentration calculated by the mass balance approach invariably yielded conservative estimates (i.e. higher than the analytical result).

In the textile plant surveyed as a model in connection with the development of this regulation, calculations which were made assuming undiminished benzidine concentrations in spent dyes indicated median benzidine concentrations of 13.07 μg/l with a calculated maximum daily concentration as high as 17.7 μg/l. Actual measured concentrations by chemical analyses measured on a subsequent operating day averaged 3.5 μg/l. A questionnaire survey of 3 other textile plants which use benzidine-based dyes but as a lower percentage of the total dyes used, indicated average calculated concentrations of 0.25, 0.15 and 0.41 μg/l, respectively, in their effluents although one plant had one day with a calculated benzidine concentration of 3.2 μg/l.

In the leather tanning plant surveyed as a model in connection with the development of this regulation, calculations which were made assuming undiminished benzidine concentrations in spent dyes indicated a dye house blowdown wastewater concentration of 0.38 μg/l. Other plant wastes diluted the benzidine concentration to 0.25 μg/l before introduction into the waste treatment facility. Two other facilities surveyed by questionnaire had calculated average benzidine concentrations of 0.73 μg/ and 0.27 μg/l, respectively.

In the paper dyeing plant surveyed as a model in connection with the development of this regulation, calculations which were made assuming undiminished benzidine concentrations in spent dyes indicated that the concentration in the exhausted pulping liquors averaged 4.5 μg/l with a maximum daily benzidine concentration calculated to be 8.5 μg/l. Four other facilities surveyed by questionnaire had calculated average benzidine concentrations of 0.02, 0.49, 0.004 and 3.2 μg/l, respectively, in their effluents.

Available data, therefore, indicate that all three of the principal applicator categories had benzidine concentrations which were normally less than the 10 μg/l average daily concentration proposed in these standards. However, the calculated maximum daily concentrations are significant. A dye applicator typically varies the type of dye used and may use a higher percentage of benzidine-based dye than reflected in these data during a particular period of time. Therefore, the calculated discharge concentrations might be substantially higher than reflected here. Furthermore, the sample size reported here is small and it is believed that the concentrations in the effluents from other plants in each of these categories may not be as low as those reported above. To provide additional data regarding the discharge of benzidine by dye applicators, the Benzidine Task Force of SOCMA conducted an analytical survey of the wastewaters of representative plants for each of the 3 industrial subcategories. None of the samples showed concentrations at the chloramine T detection limit of 10 μg/l benzidine. These results are consistent with mass balance calculations reported above which were made on similar effluents.

One potential problem remains concerning discharge by benzidine-based dye users. If strong reducing conditions exist, benzidine based dyes conceivably can be reduced to the parent compound, benzidine. Such reducing conditions can occur if the reductive stripping of dyes from product materials failing to meet quality control standards is practiced, or if reductive materials are used elsewhere in the manufacturing process and become mixed with benzidine-based dyes in the sewers or waste treatment system. Oxidative stripping can be used rather than reductive stripping which can eliminate that possibility. However, no data are available to demonstrate the occurrence of dye reduction to benzidine under the reducing conditions prevalent in these industrial discharges. The limited sampling and chemical analyses of such effluents have not shown any unexpectedly high concentrations of benzidine and therefore the Agency has no information indicating that such benzidine formation is in fact taking place.

(2) *Toxicity.* Benzidine has not been studied extensively for toxicity to aquatic species since the main concern has been its carcinogenic activity in man. However, initial 96-hour TL50 values from static bioassays with benzidine have ranged from 2.5 mg/l for the red shiner, to 20 mg/l for one test for the fathead minnow.

(3) *Human Health Effects.* The incidence of bladder tumors resulting from occupational exposure to aromatic amines was first described by Rehn in Germany in 1895. Long-term retrospective studies undertaken in workers exposed to dyes and dye intermediates have associated the manufacture of benzidine with a high risk of developing bladder cancer. Average latency periods from first exposure to detection of the first tumor is 17 years. It has been noted that trying to decrease the potential exposure by limiting the duration of employment on the process only serves to increase the number at risk.

Accordingly, the Occupational Safety and Health Administration (OSHA) of the United States Department of Labor

has established benzidine standards prescribing procedures and requirements to minimize human contact in the work place, applicable to any area in which benzidine is manufactured, processed, repackaged, released, handled or stored. These stafety standards are set forth at 29 CFR 1910.1010.

The Agency does not have any evidence at this time of actual, direct exposure of humans to benzidine in the aquatic environment or through ingestion from drinking water sources.

(4) *Persistence; Degradability.* Benzidine has been detected in the Sumida River in Tokyo, Japan, at concentrations up to 233 μg/l though it has not been found in navigable waters of the United States. To date, through the limited studies conducted, benzidine has been shown to be inhibitory to bio-oxidation by activated sludges during sewage treatment at a concentration of 500 mg/l, slightly inhibitory at a concentration of 1–5 mg/l, and thought to be bio-oxidized at a concentration of 0.1 mg/l or less. Benzidine disappears from the water column following discharge, and therefore is not regarded as persistent.

(5) *Bioaccumulation.* Through a radiometric analysis, bluegills have been shown to bioconcentrate residues from 14C-benzidine to a factor of 44 times the water concentration in the edible portions of the fish.

(6) *Criteria Formulation.* Benzidine has not been studied extensively for toxicity to aquatic species since the main concern has been its carcinogenic activity in man. Bioassays with benzidine have produced 96-hour TLms as low as 2 mg/l for fish. The bioaccumulation study referenced above showed that edible tissue residues can accumulate up to 44 times the ambient water level.

Because neither epidemiological nor other human dose-response data exist, an ambient water quality level protective of human health for benzidine has been calculated based in part upon mathematical extrapolation modelling. The extrapolation is set forth in Appendix 1 to the Benzidine Criteria Document. The results of that approach, as well as the qualifications inherent in the use of those results, are summarized as follows. Levels of benzidine which produce a lifetime risk of no more than one tumor per million people exposed, if allowed to reach man through water, are estimated to range from 0.05 μg/l to 0.8 μg/l depending on the data and extrapolitan method employed. Calculations based upon risks of one tumor per 500,000 people exposed, or 10 million exposed, do not result in a substantial expansion of the magnitude of this range. These extrapolation methods for estimating human dose response from animal data are inherently imprecise. They are used solely to furnish some indication of relationship between exposure levels and potential risks. Such methods must be used carefully and in coordination with all other data available in establishing protective criteria. Moreever the figures are likely to be over protective because the extrapolation assumes a continuing lifetime exposure to two liters of water containing the calculated benzidine concentration daily. Accordingly, their use here should not be construed as a general statement of Agency policy regarding acceptable levels of risks or as a percent for regulating action by the Agency in other contexts.

Benzidine does not persist in the water column following discharge, and to date has not been detected in the aquatic environment of the United States. For this reason as well as all of the reasons set forth in the preceding paragraph, the Agency does not believe that setting a criterion at the lower level (0.05 μg/l) indicated by the mathematical modelling is justified. Considering the general range indicated by the modelling and the lack of evidence of actual direct human exposure from water, an ambient water criterion of 0.1 μg/l is recommended. Presently available data indicate that an ambient water criterion at this level will provide the requisite degree of safety for human health as well as for aquatic organisms, consistent with the statutory purposes of section 307(a).

(7) *Control Technology Available to Manufacturers and Dye Applicators.*

BENZIDINE MANUFACTURING WASTEWATERS

Because benzidine is a recognized carcinogen, plant operating procedures in its manufacture are designed to contain wastes in closed vessels to the maximum extent feasible in order to protect personnel. Waste treatment, as currently practiced by Allied Chemical Co. and GAF, is by the so-called nitrous acid oxidation procedure. The treatment is provided on a batch basis. In essence, all of the benezidine-related wastes are placed into a reactor vessel where a sodium nitrite solution is added along with a strong acid (either sulfuric or muriatic) to lower the pH to 2.0. The temperature is reduced to 10 C. The nitrite solution is added until the presence of excess nitrite is detected in the reactor vessel. Following this treatment, the wastes are released for mixing with other plant wastes and ultimate introduction into a reciving POTW system.

Other systems have been investigated for these concentrated wastewaters. Activated carbon adsorption technology is capable of reducing concentrations to the 1–10 μg/l level. This technology has not been demonstrated on a full scale system for benezidine wastes and could require up to 2 years for implementation. Preliminary cost figures based on projections from laboratory data appear to be one-third to one-half that for the nitrous acid procedure. Industry has expressed a reservation with regard to the use of activated carbon because of the possibility of increased worker exposure to benzidine sorbed on the carbon. However, currently available carbon handling systems minimize worker contact to less than present OSHA requirements.

Ozone treatment has also been evaluated. An experimental ozonation system has been shown to reduce benzidine from 117 mg/l to 0.01 mg/l in 36 minutes. However, a capital expenditure of several million dollars has been estimated for the entire industry which from an economic viewpoint is non-competitive with other potential systems.

Other systems evaluated included polymeric adsorbents and direct radiation. However, insufficient data were available to project the feasibility of these systems.

In addition to physical-chemical systems described above, an evaluation of the effects of benzidine on bio-oxidation systems has also been made. Available data indicate that benzidine is toxic at concentrations of 500 mg/l, is slightly inhibitory at concentrations of 1 to 5 mg/l and is non-toxic to such systems at 0.1 mg/l. More recent laboratory studies with acclimated activated sludge-type biological systems have indicated that benzidine is biodegradable at a 0.045 mg/l concentration with 90 percent undergoing degradation and 10 percent being incorporated into the activated sludge mass. Thus, biological treatment systems apparently will effectively treat diluted nitrous acid wastes from manufacturers.

BENZIDINE-BASED DYE MANUFACTURING WASTEWATERS

Wastewaters from the manfacturers contain benzidine concentrations of approximately 100 μg/l in the highly colored "mother liquor." At present at both Allied Chemical and GAF, these are mixed with the treated benzidine wastewaters and are subjected to flow equalization and pH adjustment before discharge. Each of the three present manufacturers either discharges to a municipal POTW or, in the case of GAF, plans to do so as soon as such facilities are available. Information available to EPA indicates that the benzidine levels discharged would not inhibit biological secondary treatment systems and that such systems would achieve significant removals.

BENZIDINE-BASED DYE APPLICATOR (USER) WASTEWATERS

The typical waste treatment systems applied to these wastewaters are either the aerated lagoon or extended aeration variations of the activated sludge biological treatment process. Such processes are consistent with the 1977 requirements under the Act, although such treatment is not necessarily required in order to meet the standards hereinafter proposed. Because existing controls appear capable of meeting the proposed standards, no other system has been evaluated for dye applicators in connection with this rulemaking. The wastes from these facilities contain only small quantities of benzidine and should receive adequate treatment from such biological treatment installations as installed either at the industrial site or by municipal systems employing similar biological treatment systems.

(8) *Economic Impact.* The economic impact of the proposed regulations on the direct dischargers of benzidine is expected to be insignificant. Following the connection of GAF to the Rensselaer, NY, POTW, there will be no existing benzidine dye manufacturers who dis-

charge directly. Although the likelihood of new manufacturing sources of benzidine or benzidine-based dyes appears small, such an operator could use activated carbon adsorption treatment for concentrated benzidine manufacturing wastes. Costs for this technology appear to be less than the nitrous acid treatment systems in current use. Costs for carbon adsorption treatment could be passed through to subsequent users since the benzidine-based dye market price already reflects similar or even higher treatment costs for the nitrous acid process now used by the major producers.

For dye applicators in the textile, leather and paper products subcategories, the cost of compliance with the proposed mass balance monitoring approach will be restricted to only a very small additional administrative cost for recordkeeping and reporting, except in those cases where compliance with the standards would require use of the 40 CFR 136 procedure. In such cases, significant costs could result and the Agency solicits information on such costs and impacts.

(9) *Rationale for Standards.* The general approach taken by the Agency in developing the proposed standards for benzidine has been mentioned above. For the reasons previously set forth, the recommended ambient water criterion for benzidine which is protective of both aquatic life and human health is 0.1 μg/l.

In developing the proposed standards for benzidine, the Agency has considered not only the risks of exposure which are reflected in the recommended ambient water criterion, but also its behavior in the aquatic environment following discharge. As recognized in the preamble to the Notice of Proposed Toxic Pollutant Effluent Standards published on June 10, 1976, "translating a safe water quality criterion number to an end-of-the-pipe standard is at best an imprecise calculation." In addition to benzidine's apparent lack of persistence in the water column, the actual discharge concentration of any substance from a point source does not normally remain the ambient concentration. In fact, for the typical discharge situation, the effluent disperses following discharge and becomes greatly diluted. The area of dilution is often referred to as a "mixing zone," and will vary in size and shape from one body of water to the next. The result of this phenomenon is that the pollutant concentration typically becomes greatly diluted in the receiving water and may not even be detectable.

In most cases, therefore, an effluent standard which includes a concentration of the pollutant which is considerably greater than that desired in the ambient water will nevertheless result in achievement of the concentration reflected in the ambient water criterion at the edge of and beyond a reasonable mixing zone. To deal with situations where the receiving water conditions provide insufficient dispersion and dilution, or a water use exists in such close proximity to a discharge that removal through natural processes is insufficient to provide the ample margin of safety required by the Act, a mechanism in the nature of a "tightening variance" clause was proposed in § 129.7 of the rulemaking proposed on June 10, 1976. This variance would allow establishment of a more stringent limitation on effluents where the particular characteristics of the local receiving waters so warrant.

The calculation of effluent standards for benzidine and benzidine-based dye takes into account the two operations described above, i.e. production of the benzidine and production of the dyes. In the benzidine manufacturing operation, the concentrated benzidine manufacturing wastes are treated by the nitrous acid oxidation procedure. Available information indicates that benzidine concentrations of less than 10 μg/l are achievable on the average with this process. This provides the basis for calculating a maximum average daily concentration in the effluents.

A limitation on the weight of benzidine discharged per unit of production is specified in order to prevent a manufacturer from discharging larger quantities of benzidine to the environment than necessary, and then using dilution alone to comply with the standards. GAF's estimated annual production of 140,000 pounds of benzidine with the annual discharge of 78,000 gallons of wastewater at a benzidine concentration of 10 μg/l, results in a mass emission limit of 0.00005 kg benzidine per 1000 kg of benzidine produced.

The second component of the operation, namely the actual dyestuff manufacture, must be added to the benzidine contributed by the benzidine manufacturing process. GAF has reported that the sampling point which contains the dye manufacturing wastes averages 600,000 gallons per day. Using an achievable concentration of 10 μg/l, the mass emission can be calculated as 0.050 pounds per day (0.0227 kg per day). Utilizing the estimated 140,000 pounds per year of benzidine produced by GAF and an estimated 360 operating days per year, the mass emission rate from this operation is calculated to be 0.1288 kg benzidine per 1000 kg of benzidine produced. Addition of the benzidine mass loading from the benzidine manufacturing operation with that from the dye manufacturing operation yields a mass loading of approximately 0.130 kg benzidine per 1000 kg of benzidine produced. This is proposed as the maximum average daily loading standard for manufacturers.

Insufficient data are available to characterize the benzidine concentration variations in combined wastewaters with statistical precision. For example, GAF has sampled wastes principally composed of dye manufacturing wastes. Of the 52 daily composite samples collected at this sampling point, 45 had benzidine concentrations less than the 5 μg/l detection limit inherent in their sampling methods. Seven samples had concentrations ranging as high as 134 μg/l with three samples (5.8 percent) exceeding 50 μg/l.

Because these processes are batch processes, the manufacturers have control over times of release. Therefore, a variability factor of five multiplied by the average concentration is reasonable for this industry as a maximum permissible concentration for any day. Thus the data available to the Agency indicate that existing sources in the manufacturing subcategory can achieve an effluent standard of a daily average computed from the results over a calender month of 10 μg/l and not to exceed 50 μg/l for the results representing any working day. Considering the disappearance of benzidine from the water column after discharge, the absence of high bioaccumulation rates, and the existence of normal dilution and dispersion factors, discharges at the aforesaid levels would appear to avoid concentrations in ambient receiving waters in excess of 0.1 μg/l. Therefore, thees levels are proposed by the Agency for existing manufacturing sources.

With respect to applicators, plants in this category, based upon the available data, can achieve an effluent concentration of 10 μg/l of benzidine, as calculated by the mass balance monitoring approach, as a daily average by the use of in-place technology. The Agency believes that the actual concentration as determined by the method specified in 40 CFR 136 (chloramine T) is actually substantially lower. This in-place technology typically includes either extended aeration or aerated lagoons which have hydraulic detention times exceeding one working day and possibly several days. These tanks or basins provide mixing and dampen concentration variations of influent wastewaters. In addition, applicators can carefully manage the scheduling of benzidine use and the subsequent release of dye baths to avoid excessive concentrations. This technique can assist in complying with the standard, and further reduce variability in the concentrations from day to day. For these reasons, the use of a variability factor of only 2.5 times the average for the maximum allowable concentration is justified. Accordingly a maximum allowable concentration for any working day of 25 μg/l is proposed for the applicators. Because the amounts of benzidine in the wastes of the applicators are inherently quite small, no weight loading limitation is proposed for these categories.

Because standards proposed for existing manufacturing and applicator sources appear to provide the requisite protection based upon presently available data, the proposed standards for new sources are the same as for existing sources.

As these industries achieve the 1977 effluent limitations required under sections 301, 304, and 402 of the Act, benzidine concentrations in actual practice may be further reduced. In addition, subsequent monitoring or other information may require a later revision of these standards in the direction of greater stringency. C.f. section 307(a)(3). How-

ever, based on existing information the standards proposed at this time would appear to provide that degree of safety and protection required by section 307(a) of the Act.

III. Public Participation in Rulemaking Process

A public hearing to consider the proposed effluent standards will be held pursuant to section 307(a)(2) of the Act commencing on July 30, 1976, at 10:00 AM in Room 2409, Waterside Mall, EPA, 401 M Street, S.W., Washington, D.C. In accordance with the Agency's rules of practice governing public hearings on effluent standards for toxic pollutants, 40 CFR Part 104 as amended, 41 FR 17898 (April 29, 1976), the first hearing day will include a prehearing conference at the above stated time and place. All persons interested in participating in those hearings as objecting parties should refer to the amended rules of practice, 41 FR 17898, and should not rely on previous editions. Any person who has objection to any standard proposed herein may file with the Hearing Clerk (A–100), Room 1019 WSME, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, within 25 days of the date of this notice, a statement of objection in triplicate which shall meet all of the requirements of 40 CFR 104.3 (a) and (b). The presiding officer may refuse to permit any person to participate in said hearing who fails to comply with any of the provisions of those sections.

In addition to the foregoing, any person interested in this proposed rulemaking but who does not participate as a party in the formal hearing may submit written comments to the Agency on the proposed rulemaking. Such comments should be filed in triplicate, if possible, and should be addressed to: Hearing Clerk (A–100), Room 1019 WSME, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. All comments which are received by the hearing clerk and which are postmarked on or before July 30, 1976, shall become a part of the hearing record in the manner prescribed in 40 CFR 104.3(d) and shall be considered by the Administrator prior to the promulgation of final standards.

Dated: Jun 21, 1976.

Russell E. Train,
Administrator.

1. In 40 CFR Part 129, Subpart A (as proposed at 41 FR 23576 (June 10, 1976)), is amended by adding a new entry to the table of contents to read as follows:

Sec.
129.104 Benzidine.

§ 129.4 [Amended]

2. Subpart A of Part 129 is further amended by adding new paragraph (e) to § 129.4 to read as follows:

(e) Benzidine—"Benzidine" means the compound benzidine and its salts as identified by the chemical name 4,4'-diaminobiphenyl.

3. Subpart A of Part 129 is further amended by adding new § 129.104 to read as follows:

§ 29.104 Benzidine.

(a) *Specialized definitions.* (1) "Benzidine Manufacturer" means a manufacturer who produces benzidine or who produces benzidine as an intermediate product in the manufacture of dyes commonly used for textile, leather and paper dyeing.

(2) "Benzidine-Based Dye Applicator" means an owner or operator who uses benzidine-based dyes in the dyeing of textiles, leather or paper.

(3) The ambient water criterion for benzidine in navigable waters is 0.1 μg/l.

(b) *Benzidine manufacturer*—(1) *Applicability.* (i) These standard apply to:

(A) All discharges into the navigable waters of process wastes; and

(B) All discharges into the navigable waters of wastes containing benzidine from the manufacturing areas, loading and unloading areas, storage areas, and other areas subject to direct contamination by benzidine or benzidine-containing product as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff, and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of benzidine; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR Part 136.

(3) *Effluent standards*—(i) *Existing sources.* Discharges from a benzidine manufacturer shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month, and shall not exceed a monthly average daily loading of 0.130 kg/kkg of benzidine produced, and shall not exceed 50 μg/l in a sample(s) representing any working day.

(ii) *New sources.*—Discharges from a benzidine manufacturer shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month, and shall not exceed a monthly average daily loading of 0.130 kg/kkg of benzidine produced, and shall not exceed 50 μg/l in a sample(s) representing any working day.

(4) The standards set forth in this paragraph (b) shall apply to the total combined weight or concentration of benzidine, excluding any associated element or compound.

(c) *Benzidine-based dye applicators*—(1) *Applicability.* (i) These standards apply to:

(A) All discharges into the navigable waters of process wastes; and

(B) All discharges into the navigable waters of wastes containing benzidine from the manufacturing areas, loading and unloading areas, storage areas, and other areas subject to direct contamination by benzidine or benzidine-containing product as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff, and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of benzidine; or to stormwater that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* (i) Environmental Protection Agency method specified in 40 CFR Part 136; or

(ii) Mass balance monitoring approach which requires the calculation of the benzidine concentration by dividing the total benzidine contained in dyes used during a working day (as certified on the label by the manufacturer) by the total quantity of water discharged during the working day.

[Note.—The Regional Administrator (or State Director, if appropriate) may rely entirely upon the method specified in 40 CFR Part 136 in analyses performed by him for enforcement purposes.]

(3) *Effluent Standards*—(i) *Existing Sources.* Discharges from benzidine-based dye applicators shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month; and shall not exceed 25 μg/l in a sample(s) or calculation(s) representing any working day.

(ii) *New Sources.* Discharges from benzidine-based dye applicators shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month; and shall not exceed 25 μg/l in a sample(s) or calculations(s) representing any working day.

(4) The standards set forth in this paragraph (c) shall apply to the total combined concentrations of benzidine, excluding any associated element or compound.

[FR Doc.76–18877 Filed 6–29–76;8:45 am]

federal register

WEDNESDAY, JUNE 30, 1976



PART VI:

FEDERAL ELECTION COMMISSION

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ADVISORY OPINIONS

List of Requests

FEDERAL ELECTION COMMISSION

[Notice 1976–32, AOR 1975–144 and 1976–3 through 1976–26]

ADVISORY OPINIONS

List of Requests

Pursuant to 2 U.S.C. § 437f(c) and the procedures reflected in Part 112 of the Commission's notice of proposed rulemaking, published on May 26, 1976 (41 FR 21590), advisory opinion requests 1975–144 and 1976–3 through 1976–26 chase at the Federal Election Commission. A copy of the original request is available for public inspection and purchase at the Federal Election Commssion, Public Records Division, at 1325 K. Street, N.W., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1975–144: Transfer of surplus 1972 campaign committees to proposed office account of incumbent Senator whose term expires in 1979. Requested by the Honorable James Abourezk, United States Senate.

AOR 1976–3: Acceptance of contribution on corporate check with written notation stating that proceeds were personal funds. Requested by James R. Bell on behalf of the C. Cooper Tedder Campaign Committee, Rainbow, South Carolina.

AOR 1976–4: Application of 2 U.S.C. § 441e to contributions by non-U.S. citizens who have been issued a "green card" as a permanent residency visa. Requested by Donald J. Morfee, Chairman, Pullman Employees Good Government Fund, Chicago, Illinois.

AOR 1976–5: Application of 2 U.S.C. § 432 (e)(1) to contributions by principal campaign committee from one Federal candidate to another Federal candidate or to State or local candidates. Requested by the Honorable John M. Slack, U.S. House of Representatives.

AOR 1976–6: Obligation to make restitution of unlawful corporate contribution received in 1972; Legality of making restitution from funds held by current committee. Requested by the Honorable Howard H. Baker, Jr., United States Senate.

AOR 1976–7: Whether costs of fundraising for a newsletter fund (39 U.S.C. § 3210) may be defrayed from funds previously collected for the newsletter fund. Requested by the Honorable Andrew Maguire, United States House of Representatives.

AOR 1976–8: Federal preemption under 2 U.S.C. § 453 of State law concerning petition and organizational requirements for new political parties. Requested by the Brewster for President Committee, Maitland, Florida.

AOR 1976–9: Legality under 2 U.S.C. § 441e of accepting contributions to a Federal election campaign from non-U.S. citizens holding "green cards" who are living and working in the United States. Requested by the Honorable James J. Delaney, U.S. House of Representatives.

AOR 1976–10: Federal preemption under 2 U.S.C. § 453 of State statute restricting a Federal candidate's use of unexpended campaign funds. Requested by the Honorable Gene Snyder, United States House of Representatives.

AOR 1976–11: Status of county party committees as independent from State party committee for purposes of separate contribution limits under 2 U.S.C. § 441a. Requested by Steven I. Platt, Counsel for the Democratic State Central Committee of Maryland, Oxon Hill, Maryland.

AOR 1976–12: Status as membership organization and class of persons who may be solicited by national organization of credit unions with member leagues and local credit unions. Requested by Richard L. Ensweiler and Ronald C. Frankis on behalf of Credit Union Legislative Action Council (a political committee), Birmingham, Alabama.

AOR 1976–13: Age of capacity for a minor child to make a contribution to a Federal election campaign from funds that are separately owned and controlled by the minor child. Requested by Allen E. Brandstater for California Citizens for Reagan for President, North Hollywood, California.

AOR 1976–14: Whether responsibility for ensuring that expenditures of entire State party organization are within limitations constitutes control over county committees under 2 U.S.C. § 441a(a)(5)(B). Requested by William F. McLaughlin, Chairman, Michigan Republican State Committee, Lansing, Michigan.

AOR 1976–15: Use of funds in a State party committee's Federal account which have been contributed by county organizations; reporting requirements of and limitations applicable to congressional district fundraising clubs. Requested by Ross E. Davis, State Chairman, Republican State Central Committee of Washington, Tukwila, Wash.

AOR 1976–16: Use of funds contributed at a fundraiser prior to announcement of Federal candidacy. Requested by John D. Lynch, Treasurer, Noel for U.S. Senate, Warwick, Rhode Island.

AOR 1976–18: Payment of wages and subsistence expenses by the Socialist Labor Party and the SLP Campaign 1976 Committee to the party's vice-presidential candidate. Requested by Roger R. Mulholland for the Socialist Labor Party and SLP Campaign 1976, San Rafael, Calif.

AOR 1976–18: Sale of T-shirts by a chamber of commerce political action committee and member firms which allows the buyers to designate the recipient of the net proceeds. Requested by Logan M. Cheek, Vice Chairman, HEED (political action committee of the Rochester Area Chamber of Commerce), Pittsford, New York.

AOR 1976–19: Whether a bank holding company which owns national and State banks is a "national bank" prohibited from giving contributions to State or local candidates. Requested by Mitchell Melich, Treasurer, First Security Corporation Political Action Committee, Salt Lake City, Utah.

AOR 1976–20: Whether contributions to an unauthorized political committee are limited to $5,000 and subject to an individual $25,000 limit. Requested by Charles H. Breecher, Treasurer, Delaware Volunteers for Reagan, Rehoboth Beach, Delaware.

AOR 1976–21: Whether the gross purchase price of a ticket to a concert the proceeds of which go to a presidential candidate is a contribution that qualifies for Federal matching funds; "written instrument" requirements; expenses subject to limitation. Requested by Kenneth Ziffren of Ziffren and Ziffren on behalf of the Brown for President Committee, Los Angeles, California.

AOR 1976–22: Reporting by local Democratic parties of the transfer of bingo game proceeds to a Federal account and of subsequent contributions and expenditures. Requested by Morley A. Winograd, Chairperson, Michigan Democratic Party, Lansing, Michigan.

AOR 1976–23: Corporate political action committee (PAC)—use of payroll deduction; preemption of State law; pre-1976 Amendments solicitation; access by union PAC to employee lists; employee education programs. Requested by Anthony L. Hodges for the Conoco Employees' Good Government Fund, Houston, Texas.

AOR 1976–24: Establishment by a political committee of a separate fund for legislative activities and solicitations to that fund. Requested by Vigo G. Nielsen, Jr., of Dobbs, Doyle & Nielsen on behalf of Gun Owners of America (a political committee), San Francisco, California.

AOR 1976–25: Deposit of excess campaign funds in a savings account with a savings and loan association. Requested by Dick Wright, Treasurer, Friends of Tom Bevill Committee, Jasper, Alabama.

AOR 1976–26: Treatment of contributions of an immediate family member in excess of $1,000 received in part prior to Supreme Court's decision in *Buckley* v. *Valeo*. Requested by Wayne C. McGarvey, Treasurer, Rolde for Congress Committee, Portland, Maine.

Dated: June 25, 1976.

VERNON W. THOMSON,
Chairman for the
Federal Election Commission.

[FR Doc.76–18934 Filed 6–29–76;8:45 am]

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of April 1, 1976)

Title 23—Highways ---------- $4.55

Title 26—Internal Revenue Part 1 (§§ 1.401–1.500)------- 3.55

Title 26—Internal Revenue (Parts 30–39))---------- 3.45

Title 27—Alcohol, Tobacco Products and Firearms------- 7.70

[*A Cumulative checklist of CFR issuances for 1976 appears in the first issue of the Federal Register each month under Title 1*]

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