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federal register

WEDNESDAY, SEPTEMBER 29, 1976

highlights

PART I:

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

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
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	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 program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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*The Defense and Transportation Departments have submitted magnetic tapes containing the text of the agency's Systems of Records. The full printed text will appear in the *Privacy Act Issuances, 1976 Compilation*, that is being published by the Office of the Federal Register under § 3 of the Privacy Act.

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Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.5]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart D—Rural Rental Housing Loan Policies, Procedures and Authorizations

ENVIRONMENTAL IMPACT STATEMENTS; CORRECTION

Section 1822.88(n) of Subpart D of Part 1822, Title 7, Chapter XVIII, Code of Federal Regulations (40 FR 4278) is amended to correct a recent error in the regulations regarding criteria necessitating preparation of Environmental Impact Statements. FmHA amended this paragraph 41 at FR 34578 in the FEDERAL REGISTER dated Monday, August 16, 1976. Inadvertantly, in the process of updating FEDERAL REGISTER cross references, this paragraph was published at 41 FR 39005 dated Tuesday, September 14, 1976, and restated incorrect information as found prior to the August 16, 1976, amendment. Inasmuch as this amendment now corrects § 1822.88(n) to read as previously amended on August 16, 1976, publication for prior rulemaking is not necessary.

As amended, § 1822.88(n) reads as follows:

§ 1822.88 Special conditions.

* * * * *

(n) *Guidelines for preparing environmental assessment and environmental impact statements.* All projects shall be processed in accordance with Subpart G of Part 1901 of this chapter. Projects involving section 8/515 loans shall also comply with Exhibit O of this Subpart.

* * * * *

(42 U.S.C. 1480, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.)

Effective Date. This amendment is effective September 29, 1976.

Date: September 21, 1976.

JOSEPH R. HANSON,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-28432 Filed 9-28-76;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Increased Pricing Flexibility; Reallocation of Increased Product Costs Among Products by Resellers and Retailers

Correction

In FR Doc. 76-12801, appearing at page 18304, in the issue for Monday, May 3, 1976, the following change should be made:

On page 18306, the second line of § 212.93(i)(2)(iv) should read "er does not allocate its increased prod-".

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-969, Amdt. 23]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Reclassification of Air New England as Group I Route Air Carrier

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., September 23, 1976.

With the award of a certificate of public convenience and necessity,[1] Air New England (ANE) became subject to the accounting and reporting requirements of of Part 241 of the Board's Economic Regulations—the Uniform System of Accounts and Reports for Certificated Air Carriers (USAR). The accounting structure and reporting requirements under the USAR are differentiated in scope and detail to conform with the operational size and capacities of three carrier groups: Group I consisting of the smallest carriers, Group II consisting of the intermediate carriers, and Group III of the largest carriers. Based on informal discussions and correspondence with ANE shortly after the issuance of its certificate, ANE was tentatively classified by letter[2] in the Group III category (which currently includes all trunk and local service carriers), and subsequently, classified formally in the Group III category by amendment to section 04 of the USAR.[3]

By petition dated August 13, 1976,[4] ANE has requested the Board to amend section 04 so as to reclassify ANE as a Group I air carrier. In support of its request, ANE states that it has found that the reporting burden imposed upon it under its current Group III classification is disproportionate to its size. Also, ANE states that, in relation to the operational levels of the balance of the industry, ANE is very small, and its size simply will not permit it to absorb the regulatory burdens assumed by larger carriers. In further support of it request, ANE submitted a table showing the insignificance of its operations in comparison with those of the currently classified local service carriers.

The Board has carefully considered the data presented by ANE in its petition and agrees with the carrier that its operational size and capability are much less than the trunk and local service carriers presently classified in the Group III category, and ANE's operating results are miniscule when compared to those of even the smallest local service carrier. Accordingly, the Board believes that the level of reported detail now submitted by ANE as a Group III air carrier is not needed to fulfill its regulatory responsibilities. We have, therefore, determined to adopt the requested amendment reclassifying ANE as a Group I air carrier.

Since this amendment relaxes the existing regulation for ANE and will not subject any person to any burden, the Board finds that notice and public procedure thereon are unnecessary and not required in the public interest. The amendment will be made effective on October 1, 1976 so that it will encompass a complete monthly and calendar quarter reporting on the new Group I basis.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 241 of the Economic Regulations (14 CFR Part 241), effective October 1, 1976, as follows:

Amend Section 04 Air Carrier Groupings and Standard Name Abbreviations by:

1. Adding "Air New England, Inc.—Air New England." to the list of Group I route air carriers, the revised Group I list to read in pertinent part:

[1] Board Order 74-7-70 adopted July 17, 1974.

[2] From Director, Bureau of Accounts and Statistics dated November 19, 1974.

[3] ER-948 adopted March 19, 1976.

[4] Contemporaneously herewith, ANE has filed an application for an amendment to its certificate of public convenience and necessity; this application will be considered in a separate proceeding.

Air Micronesia, Inc.	Air New England.
Air New England, Inc.	Air Micronesia.
Aspen Airways, Inc.	Aspen.

* * * * *

2. Deleting "Air New England, Inc.—Air New England." from the list of Group III route air carriers.

(Sec. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, as amended (49 U.S.C. 1324(a),1377))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-28492 Filed 9-28-76;8:45 am]

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-112; Amdt. 1]

PART 371—ADVANCE BOOKING CHARTERS

Amendment of Charter Prospectus Filing Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., September 24, 1976.

For the reasons set forth in SPR-111, issued contemporaneously herewith, the Civil Aeronautics Board hereby amends Part 371 of its Special Regulations (14 CFR Part 371), as set forth below.

Because these amendments create no significant additional burden for any member of the public, and public benefit will be derived from putting them into effect without delay, it is found for good cause that notice and public procedure thereon are unnecessary and contrary to public interest, and that they may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 371 of its Special Regulations (14 CFR Part 371) effective October 7, 1976, as follows:

1. Section 371.25, *Operating authorization of charter operators,* is amended by revising paragraph (a)(2), and by adding a new paragraph (a)(3), to read as follows:

§ 371.25 Operating authorization of charter operators.

* * * * *

(a) * * *

(2) Except as specified in paragraph (a)(3) of this section, no change in the facts reflected in a filed Prospectus shall become effective until at least 15 days after the charter operator or foreign charter operator and the direct air carrier have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, an amended Prospectus reflecting such change, unless he has been notified by the Board that such change may become effective sooner: *Provided, however,* That if during the 15-day period following filing of an amended Prospectus hereunder, the charter operator or foreign charter operator has been notified that the Board has rejected such amended Prospectus for noncompliance with this part, then such change shall not become effective until he has subsequently been notified by the Board that such filing has been accepted: *And provided, further,* That the direct air carrier need not join in the filing of an amended Prospectus which reflects only such change or changes as do not involve air transportation or services in connection therewith which are to be provided by such direct air carrier. Deviations from the Prospectus may not be made except where they are beyond the control of the carrier or the operator, and there is insufficient time to file an amended Prospectus.

(3) The 15-day waiting period specified in paragraph (a)(2) of this section shall not apply to charter price increases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited, but such changes shall be filed not later than five (5) days following such change.

* * * * *

(Secs. 101, 204, 401, 402, 407, 416, and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 788; (49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1481).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-28496 Filed 9-28-76;8:45 am]

[Reg. SPR-113, Amdt. 11]

PART 373—STUDY GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS

Amendment of Study Group Statement Filing Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., September 24, 1976.

For the reasons set forth in SPR-111, issued contemporaneously herewith, the Civil Aeronautics Board hereby amends Part 373 of its Special Regulations (14 CFR Part 373), as set forth below.

Because these amendments create no significant additional burden for any member of the public, and public benefit will be derived from putting them into effect without delay, it is found for good cause that notice and public procedure thereon are unnecessary and contrary to public interest, and that they may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 373 of its Special Regulations (14 CFR Part 373) effective September 29, 1976, as follows:

1. Section 373.10, *Study group statement,* is amended by revising paragraph (b)(2) and by adding a new paragraph (b)(3), to read as follows:

§ 373.10 Study group statement.

* * * * *

(b)(1) * * *

(2) Except as specified in paragraph (b)(3) of this section, no change in the facts reflected in a filed statement shall become effective until at least 15 days after the study group charterer and the direct air carrier have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, an amended statement reflecting such change, unless he has been notified by the Board that such change may become effective sooner: *Provided, however,* That if during the 15-day period following filing of an amended statement hereunder, the study group charterer has been notified that the Board has rejected such amended statement for noncompliance with this part, then such amendment shall not become effective until he has subsequently been notified by the Board that such filing has been accepted: *And provided further,* That the direct air carrier need not join in the filing of an amended statement which reflects only such change or changes as do not involve air transportation or services in connection therewith which are to be provided by such direct air carrier. Deviations from the statement may not be made except where they are beyond the control of the carrier or the study group charterer, and there is insufficient time to file an amended statement.

(3) The 15-day waiting period referenced in paragraph (b)(2) of this section shall not apply to tour price increases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited, but such changes shall be filed no later than five (5) days following such change.

* * * * *

(Secs. 101, 204, 401 and 402 of the Federal Aviation Act of 1958 as amended, 72 Stat. 737, 743, 754, 757; (49 U.S.C. 1301, 1324, 1371, 1372).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-28495 Filed 9-28-76;8:45 am]

[Reg. SPR-114; Amdt. 16]

PART 378—INCLUSIVE TOUR CHARTERS

Amendment of Tour Prospectus Filing Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., September 24, 1976.

For the reasons set forth in SPR-111, issued contemporaneously herewith, the Civil Aeronautics Board hereby amends Part 378 of its Special Regulations (14 CFR Part 378) as set forth below.

Because these amendments create no significant additional burden for any member of the public, and public benefit will be derived from putting them into effect without delay, it is found for good cause that notice and public procedure thereon are unnecessary and contrary to the public interest, and that they may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 378 of its Special Regulations (14 CFR Part 378) effective September 29, 1976, as follows:

1. Section 378.10 *Procedure,* is amended by revising paragraph (b) and by adding a new paragraph (c), to read as follows:

§ 378.10 Procedure.

* * * * *

(b) Except as specified in paragraph (c) of this section, no change in the facts reflected in a filed Prospectus shall become effective until at least 15 days after the tour operator or foreign tour operator and the direct air carrier have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, an amended Prospectus reflecting such change, unless he has been notified by the Board that such change may become effective sooner: *Provided, however,* That if during the 15-day period following filing of an amended Prospectus hereunder, the tour operator or foreign tour operator has been notified that the Board has rejected such amended Prospectus for noncompliance with this part, then such change shall not become effective until he has subsequently been notified by the Board that such filing has been accepted: *And provided further,* That the direct air carrier need not join in the filing of an amended Prospectus which reflects only such change or changes as do not involve air transportation or services in connection therewith which are to be provided by such direct air carrier. Deviations from the Prospectus may not be made except where they are beyond the control of the carrier or the operator, and there is insufficient time to file an amended Prospectus.

(c) The 15-day waiting period specified in paragraph (b) of this section shall not apply to tour price increases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited, but such changes shall be filed no later than five (5) days following such changes.

(Secs. 101, 204, 401, 402, 407 and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 766, 771; (49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-28494 Filed 9-28-76;8:45 am]

[Reg. SPR-111; Amdt. 7]

PART 378a—ONE-STOP-INCLUSIVE TOUR CHARTERS

Amendment of Tour Prospectus Filing Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., September 24, 1976.

By this rule the Civil Aeronautics Board is amending its amended tour prospectus filing requirements for One-stop-inclusive Tour Charters (parallel changes are being made in other charter rules by separate rules), to exempt tour price increases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited from the 15-day waiting period that follows the filing of an amended prospectus.

By SPR-76 (39 FR 21124, June 19, 1974), the Board amended Part 378 of its Special Regulations to adopt two provisions requiring 15-day waiting periods in the marketing of Inclusive Tour Charters (ITC's). The first provision, § 378.10(a), requires a 15-day waiting period between the date a tour prospectus is originally filed and the date on which a tour operator may begin marketing the tour. The second provision, § 378.10(b), requires a 15-day waiting period between the filing of an amended prospectus and the date on which the amended tour may be marketed.

These waiting periods were adopted to enable the staff to monitor the marketing of ITC's by prior review of every initial and amended prospectus. Subsequently, the Board has adopted parallel provisions in the Advance Booking Charter (ABC) rule, the Study Group Charter (SGC) rule, and the One-stop-inclusive Tour Charter (OTC) rule, Parts 371, 373 and 378a of the Special Regulations, respectively.

By petition dated February 5, 1976, South American Tours, Ltd. requested that the Board amend its regulations so that the 15-day waiting period would not apply to certain types of prospectus amendments, namely, tour price increases and changes in hotels, meal plans, sightseeing, and the order in which cities are visited. Such changes, petitioner argued, are not uncommon, have no effect on a prospectus' compliance with the regulations, and cannot be the basis for rejecting an amended prospectus. Therefore, the argument continued, prior review of such changes, along with the concomitant 15-day premarketing review period, should be eliminated.

Petitioner also pointed out that when the premarketing waiting periods were adopted, the Board had agreed that minor amendments to a filed prospectus should not entail a substantial postponement of marketing activities, and the Board had imposed the same 15-day waiting period for all amendments only because it did not have sufficient information at that time to distinguish between those amendments that should be subject to the 15-day waiting period and those that should not. Petitioner argued that the Board has now had enough experience in this matter to determine, at the very least, that tour price increases, changes in hotel accommodations, sightseeing, meal plans, and the order in which cities are visited should not be among the types of changes that are subject to the 15-day premarketing waiting period.

Answers in support of the petition were filed by the National Air Carrier Association (NACA) and jointly by several tour operators.[1] In its answer NACA requested that changes in the number of seats and changes in the tour dates be added to the list of amendments that would not be subject to the 15-day waiting period. No answers were filed in opposition.

[1] Martin's Air Charter, Charter Ventures, Inc., Trade Wind Tours of Hawaii, Lake Region Travel Service, Meier International Study League, I.L.T.A., Inc. EGR Travel International, Conaway Travel Service, Inc.

The Board finds petitioner's arguments persuasive, and has therefore decided to grant the petition. Since the changes discussed by petitioner cannot affect a prospectus' compliance with the regulations, those changes have not been the object of close scrutiny by the Board's staff. In light of the staff's experience in administering the OTC rule, the Board finds that no real purpose is served in continuing premarketing review, and the concomitant 15-day postponement of marketing activities, with respect to tour price increases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited.

The Board declines, however, to grant the additional relief requested in NACA's answer to the petition. Changes in the number of seats and in tour price could require the amendment of several documents, including the surety agreement. Prior review is thus desirable with respect to such tour changes in order to ensure that all necessary documentary revisions have been made before the amended tour is marketed. Therefore, the Board finds that it is not in the public interest to eliminate the premarketing review of the prospectus amendments discussed by NACA.

The Board wishes to emphasize that it does not here address the issue of whether it should be lawful for such tour-package changes to be made with respect to participants who have purchased the tour before the changes are made. The Board's action herein, eliminating the 15-day "blackout" prior to the sale of certain changed tours, in no way affects such liabilities or obligations as the operator may incur toward persons who purchased the tour prior to such changes. Whether our rules should permit such changes to be made even if consistent with the operator's contract with his customers, is among the issues specifically raised by the rulemaking petition of our Office of the Consumer Advocate, in Docket 29165, and it is being considered in that proceeding.

Although petitioner's request was directed only toward the ITC and the OTC rules, the Board also is adopting similar amendments in the SGC and the Advance Booking Charter (ABC) rules. However, it would not be appropriate to adopt such amendments in the Travel Group Charter rule, because, as the Board indicated in SPR-73 (39 FR 1746, January 14, 1974), the basic concept of the TGC—40 or more persons sharing the cost of a charter flight—militates against allowing revisions of TGC arrangements already made.

Because these amendments, create no significant additional burden for any member of the public, and because public benefit will be derived from putting them into effect without delay, it is found for good cause that notice and public procedure thereon are unnecessary and contrary to the public interest, and that they may be made effective immediately.

In light of the foregoing, the Civil Aeronautics Board hereby amends Part 378a of its Special Regulations (14 CFR

Part 378a) effective September 29, 1976, as follows:

1. Section 378a.25, *Operating authorization of tour operators*, is amended by revising paragraph (a)(2), and by adding a new paragraph (a)(3) to read as follows:

§ 378a.25 Operating authorization of tour operators.

* * * * *

(a) * * *

(2) Except as specified in paragraph (a)(3) of this section, no change in the facts reflected in a filed Prospectus shall become effective until at least 15 days after the tour operator or foreign tour operator and the direct air carrier have jointly filed with the Board (Supplementary Services Division, Bureau of Operating Rights), in duplicate, an amended Prospectus reflecting such change, unless he has been notified by the Board that such change may become effective sooner: *Provided, however,* That if during the 15-day period following filing of an amended Prospectus hereunder, the tour operator or foreign tour operator has been notified that the Board has rejected such amended Prospectus for noncompliance with this part, then such change shall not become effective until he has subsequently been notified by the Board that such filing has been accepted: *And provided, further,* That the direct air carrier need not join in the filing of an amended Prospectus which reflects only such change or changes as do not include air transportation or services in connection therewith which are to be provided by such direct air carrier. Deviations from the Prospectus may not be made except where they are beyond the control of the carrier or the operator, and there is insufficient time to file an amended Prospectus.

(3) The 15-day waiting period specified in paragraph (a)(2) of this section shall not apply to tour price increases, changes in hotel accommodations, sightseeing arrangements, meal plans, and the order in which cities are visited, but such changes shall be filed not later than five (5) days following such change.

* * * * *

(Secs. 101, 204, 401, 402, 407, 416, and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 766, 771, 788; (49 U.S.C. 1301, 1324, 1371, 1372, 1377, 1386, 1481))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-28493 Filed 9-28-76;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Definitions

The Commodity Futures Trading Commission is amending § 180.1 of its rules governing contract market arbitration and other dispute settlement procedures, adopted by the Commission on June 25, 1976. See 41 FR 27520 (July 2, 1976).

Section 180.1(a) which defines the term "claim or grievance," is amended by deleting from the first sentence the phrase "of the particular contract market which is the forum for the settlement procedure," and inserting in lieu thereof the phrase "of a contract market." Section 180.1(b), which defines the term "customer," is amended by striking that section and inserting in lieu thereof: "The terms 'customer' and 'customers' as used in this Part do not include members of the contract market where the claim or grievance arose."

These amendments are necessary to give full effect to § 180.3 of the Commission's rules governing contract market arbitration and other dispute settlement procedures, adopted by the Commission on September 14, 1976. See 41 FR 42942, September 29, 1976. The Commission adopted § 180.3 in order to make arbitration voluntary on the part of all customers, without regard to whether the futures commission merchant or other registered person was a member of a contract market. Under a literal interpretation of § 180.1(b), however, only customers of members would be "customers" for purposes of the Commission's rules, so customers of non-members technically would not have been protected by § 180.3. There were several other technical problems created by the definitions of customer and claim or grievance. For example, under § 180.1(b), a person would not have been a "customer" unless he was a person with a "claim or grievance," so it technically would have been permissible for registrants to enter into arbitration agreements with any person who did not then have a claim or grievance without regard to the requirements of § 180.3. And, under § 180.1(a), a dispute involving transactions executed on a contract market technically would not be a "claim or grievance" if there were an agreement for arbitration by the American Arbitration Association or other non-contract market forum, and the dispute, therefore, would be outside the scope of the Commission's rules. The Commission believes that any confusion which might be created by § 180.1 should be eliminated before the rules governing contract market arbitration and other dispute settlement procedures become effective. For that reason, § 180.1 is amended by deleting the above-quoted phrases, which were inadvertently carried over from an earlier draft of the rule.

These amendments are not intended to impose any new obligations on contract markets. In this connection, the Commission wants to make clear that, under § 180.2, contract markets are required to establish fair and equitable procedures for the settlement of customer's claims or grievances not in excess of $15,000 solely against any member or employee of a contract market.

In consideration of the foregoing, the Commission hereby revises § 180.1 of Chapter I, Part 180, of Title 17 of the Code of Federal Regulations to read as follows:

§ 180.1 Definitions.

(a) The term "claim or grievance" as used in this Part shall mean any dispute which arises out of any transaction on or subject to the rules of a contract market, executed by or effected through a member of that contract market or employee thereof which dispute does not require for adjudication the presence of essential witnesses or third parties over whom the contract market does not have jurisdiction and who are not otherwise available. The term claim or grievance does not include disputes arising from cash market transactions which are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery.

(b) The terms "customer" and "customers" as used in this Part do not include members of the contract market where the claim or grievance arose.

Section 180.1, as amended, will become effective November 29, 1976. The Commission encourages interested persons to submit written comments or suggestions on the amended rule. Materials submitted will be evaluated and considered with a view to further amendment in appropriate cases. Comments should be directed to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attn: Secretariat.

(Secs. 5a(11) and 8a of the Commodity Exchange Act, as amended 7 U.S.C. §§ 7a(11), 12a (Supp. IV, 1974).)

Issued in Washington, D.C. on September 24, 1976.

By the Commission.

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

[FR Doc.76-28482 Filed 9-28-76;8:45 am]

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Voluntary Procedure and Compulsory Payments

On June 25, 1976, the Commodity Futures Trading Commission ("Commission") proposed a rule governing certain aspects of contract market arbitration and other dispute settlement procedures, which was published in the FEDERAL REGISTER (41 FR 27526 (July 2, 1976)).[1] The proposed rule, designated as § 180.3 of the Commission's regulations, would (1) require that the use by commodity customers of contract market arbitration or other dispute settlement procedures be voluntary; and (2) prohibit agreements between customers and fu-

[1] On the same date, the Commission published final rules with respect to other aspects of contract market arbitration or other dispute settlement procedures. See 41 FR 27520 (July 2, 1976).

tures commission merchants or other persons registered with the Commission which, prior to the time any claim or grievance has arisen, would require submission of future claims or grievances to a binding arbitration procedure, unless the agreement met certain prescribed conditions. Interested persons were given until July 26, 1976, to submit written comments on the proposed rule. After carefully considering all the comments received, the Commission has decided to adopt § 180.3 with the minor modifications set forth in this notice.

In a statement published in the FEDERAL REGISTER on July 10, 1975, the Commission first interpreted Section 5a(11) of the Commodity Exchange Act, as amended (the "Act"),[2] to mean that a contract market was not permitted to require a customer to agree, prior to the time a claim arose, to submit a future claim covered by that section to arbitration or other settlement procedure.[3]

The Commission thereafter published proposed rules governing contract market arbitration and other dispute settlement procedures on August 14, 1975.[4] Consistent with the Commission's prior interpretative statement, one of the rules then proposed, denominated as § 200.3, provided in subparagraph (a) that the use of the contract market settlement procedure by customers was to be voluntary and subparagraph (b) that contract market procedures bar pre-dispute arbitration agreements. In addition, proposed § 200.3(c) barred futures commission merchants, floor brokers and other persons registered with the Commission from entering into pre-dispute arbitration agreements or understandings with customers.[5] The Commission received comments strongly criticizing the proposed rules—particularly proposed § 200.3(c).[6]

As a result, on November 24, 1975, the Commission published amended proposed rules governing contract market arbitration and other dispute settlement procedures.[7] Previously proposed rule § 200.3 (redesignated as § 180.3) was amended so that it did not apply to claims or grievances which arose before adoption of the proposed rule; however, no new agreements containing pre-dispute arbitration clauses were to be allowed after the effective date of the proposed rule and existing agreements for pre-dispute arbitration were to be null and void one year after the effective date of the rule. The Commission received a number of comments on its amended proposed rules, including oral and written presentations at a hearing held on March 5, 1976, in Washington, D.C.[8]

The Commission thereafter adopted most of the rules governing arbitration and other dispute settlement procedures in substantially the same form as previously proposed; these rules, §§ 180.1, 180.2, 180.4, 180.5, and 180.6, were to be effective September 30, 1976.[9] At the same time, the Commission, after considering comments on its then proposed § 180.3, decided further to amend that rule proposal and to seek additional comment from interested persons.

As then amended, proposed § 180.3 would have (1) required that the use by commodity customers of contract market arbitration or other dispute settlement procedures be voluntary, and (2) permitted the use of pre-dispute arbitration agreements under certain prescribed conditions, but otherwise prohibited them. Briefly, four conditions were set forth: (1) The customer would not be forced to sign the agreement as a condition of doing business with the futures commission merchant or other registered person; (2) the customer would be given specific written cautions as to the effect of the agreement he was signing, and if the arbitration agreement was a part of a broader customer account agreement, the customer would separately endorse the cautionary clauses; (3) if a dispute covered by the agreement subsequently arose and the futures commission merchant or other registered person intended to submit the dispute to arbitration, the customer would then be given a written notice to the effect that he could ask for a reparations proceeding under section 14 of the Act, if the customer elected to do so within 30 days; and (4) the customer could not be required to agree to submit a future dispute to arbitration or other settlement procedures which did not comply with the requirements of § 180.5, that is, the procedures were required to be fair, equitable and voluntary.

The Commission received a number of comments on amended proposed § 180.3. The comments were, for the most part, favorable; however, there were several comments critical of proposed § 180.3(b), the provision dealing with pre-dispute arbitration agreements:

(1) The American Arbitration Association and two other commentators expressed concern that the bold-faced[10] cautionary language required by proposed § 180.3(b)(4) would be in the nature of a warning against use of an arbitration procedure and would thus discourage persons from signing pre-dispute arbitration agreements.[11] "Such warnings are not usual in commercial contracts," and "can only result in frightening away some customers." These commentators suggested that requiring the cautionary language was inconsistent with the Commission's expressed desire to encourage settlement of disputes by arbitration, and they recommended that such language be deleted from proposed § 180.3.[12]

The Commission has expressly indicated its positive attitude toward the settlement of disputes by arbitration. It does not follow from this, however, that the Commission can or should leave a customer unaware of the purpose of the agreement he is requested to sign. Although the Commission's proposal would not prohibit the use of pre-dispute arbitration agreements, the Commission believes that cautionary language is necessary to assure an informed consent on the part of the customer at the time he enters into the arbitration agreement.

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[2] Section 5a(11) of the Act states that each contract market shall: Provide a fair and equitable procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (i) the use of such procedure by a customer shall be voluntary, (ii) the procedure shall not be applicable to any claim in excess of $15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties, and (iv) the term "customer" as used in this paragraph shall not include a futures commission merchant or a floor broker . . . 7 U.S.C. § 7a(11) (Supp. IV, 1974).

[3] 40 FR 29121 (July 10, 1975). The Commission also noted, however, that: If a customer agrees to submit his claim to arbitration after the dispute arose and agrees under applicable state law, submission agreement or otherwise to be bound by the award of the arbitrators or other decision-making body, the Commission believes that the award is binding, in accordance with applicable state law. *Id.* at 29122.

[4] 40 FR 34152 (August 14, 1975).

[5] The rule was proposed under the general rulemaking authority of the Commission under section 8a(5) of the Act in order to effectuate the legislative intent, evidenced by section 5a(11), to make arbitration voluntary on the part of customers, without regard to whether the futures commission merchant or other registered person executing transactions for the customer was a member of a contract market, or was submitting a dispute for settlement pursuant to a contract market settlement procedure established under the Commission's rules or to another type of arbitration or dispute settlement procedure.

[6] Those comments are summarized at 40 FR 54430, 54432–33 (November 24, 1975).

[7] 40 FR 54430 (November 24, 1975).

[8] Notice of this hearing was published in the FEDERAL REGISTER on February 11, 1976. 41 FR 5120 (February 11, 1976).

[9] 41 FR 27520 (July 2, 1976). However, as noted *infra* page 20, the effective date of these rules has been postponed until sixty days after the date of publication in the FEDERAL REGISTER.

[10] One commentator said "[t]here is no objection, however, to the requirement that an arbitration clause contained in a brokerage contract be printed in large or bold-faced type so that the clause is clearly distinguishable from other clauses of that agreement. Some [futures commission merchants] use such a format now to insure that a customer is aware of the clause."

[11] The American Arbitration Association suggested that a more balanced approach would be to: (1) simply provide that arbitration agreements shall be voluntary; (2) assure that investors who refuse to sign arbitration agreements cannot be solely for that reason restricted from trading; (3) provide that even where there is a binding agreement to arbitrate, the customer may elect to seek reparations instead, and (4) permit this option to be exercised by the customer before requesting arbitration or within 30 days after the claim or grievance arises.

[12] Another commentator suggested that the Commission's rule should only require futures commission merchants to notify customers at the time arbitration is demanded that the reparations procedures are available in any dispute involving a violation of the Act. However, the Commission is also concerned that customers not unknowingly or unwittingly relinquish their right to sue in a court of law.

The Commission is not persuaded, therefore, that it should delete the cautionary language requirement from proposed § 180.3(b). And there is no reason to suppose that the proposed language would have any substantial effect on a customer's decision concerning arbitration after a claim or grievance arises. In those situations, the decision whether to arbitrate is typically based on the advice of legal counsel or an independent evaluation of the benefits of arbitration as opposed to litigation or reparations. Accordingly, the Commission has decided to retain the requirement of cautionary language in pre-dispute arbitration agreements.

(2) Another commentator stated that most customers would do no more than glance over the cautionary language and sign it, and even if they did read the caution they could not understand it because of its legal phraseology.[13] This commentator suggested that the cautionary language should either be deleted or its language revised so that the customer could understand precisely what rights he would be forgoing if he agrees to arbitration. While the Commission is of the view that the legal implications of the proposed language could be spelled out in all their ramifications, it would be virtually impossible to do so in less than several highly technical paragraphs. The result would be a longer and perhaps more confusing document. Accordingly, the Commission has opted for a short, concise statement, which it believes focuses on the significant aspects of the customer's rights in understandable form. It is assumed that, in most instances, if the customer does not understand the meaning of the cautionary language, advice will be sought by the customer from competent counsel.

(3) The Futures Industry Association and two other commentators raised a number of legal issues concerning proposed § 180.3(b):

(A) These commentators said that the Commission has no authority to abrogate existing arbitration agreements which do not comply with proposed § 180.3(b), and suggested that such action would be unreasonable, violative of due process, and unconstitutional both as an impairment of the obligations of contracts and as an *ex post facto* law. After careful analysis, the Commission has determined that these contentions have no legal merit.

It is well-settled that the freedom of contract protected under the due process clause of the Fifth Amendment is qualified in that, so long as the regulation is reasonably necessary to carry out statutory purposes, that regulation can forbid certain contracts or require certain clauses to be read into or become part of private contracts.[14] The Commission is convinced that, as a legal matter, courts would strike down pre-dispute arbitration agreements currently in effect in the commodities business since such clauses have the effect of negating the remedial provisions of sections 5a(11) and 14 of the Act and are signed in an atmosphere which imports a lack of informed consent on the part of certain unsophisticated customers under circumstances which may well be viewed by courts as the imposition of a contract of adhesion to the detriment of such customers. Consequently, the Commission believes that no violation of due process is inherent in requiring pre-dispute arbitration agreements to satisfy the conditions set forth in the Commission's rules.

The prohibition in Article I, section 10 of the United States Constitution against impairment of the obligations of contracts appiles to the states, not to the Federal government.[15] Since the Act is a law regulating interstate commerce and the regulations thereunder are presumed necessary and reasonable, it would be constitutionally unobjectionable if there were an incidental impairment of private contract obligations,[16] assuming that invalidation of mandatory arbitration provisions, in the absence of customer waiver, constitutes an impairment.

The prohibition in Article I, section 9 of the United States Constitution against *ex post facto* laws applies to criminal, not civil legislation.[17] Since the § 180.3(b) does not make it a crime to sign a pre-dispute arbitration agreement (or increase punishment or alter the rules of evidence or judicial procedure in a way that would disadvantage a registrant in a criminal proceeding), it would be constitutionally unobjectionable if it should incidentally have a retrospective effect on arbitration agreements.

Therefore, the Commission has determined that, on the effective date of proposed § 180.3(b), all pre-dispute arbitration agreements that do not satisfy the conditions set forth in the proposed rule will be null and void, including those heretofore signed by customers.[18]

(B) These commentators said that part of the cautionary language required by proposed § 180.3(b) "By signing this agreement you may be waiving your right to sue in a court of law, but you are not waiving your right to elect later [to seek reparations]" may be a misstatement of the law. The gist of their argument was that (1) the question whether a pre-dispute arbitration agreement creates a waiver of the right to seek reparations must be decided by Federal and state courts on a case-by-case basis and (2) the courts probably would not invalidate such an arbitration agreement because of (A) a judicial policy, supported by section 2 of the Federal Arbitration Act, of favoring arbitration and (B) the lack of an express statutory provision in the Commodity Exchange Act comparable to that in the Securities Act of 1933 barring waiver of statutory rights.

The Commission disagrees that this question must necessarily be answered on a case-by-case basis. The legislative history of the Act indicates that Congress "expected the Commission to publish regulations" "to implement and coordinate" reparations and other dispute settlement procedures "and their utilization and availability for resolution of disputes." [19] Furthermore, in direct contrast to such commentators, the Commission believes that a court would not uphold currently extant pre-dispute arbitration agreements (if all the issues were before the court), notwithstanding the policy in favor of arbitration enunciated in the Federal Arbitration Act and the lack of an express statutory provision in the Act comparable to the Securities Act of 1933, the basis upon which *Wilko* v. *Swan*, 346 U.S. 427 (1953), was decided. This belief

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[13] This commentator added that he did not agree with the Commission's view that arbitration was a quick and less costly method of resolving disputes and expressed concern about the lack of discovery procedures, the informal rules of evidence, and the fact that complicated questions of law may be decided by non-lawyers in arbitration proceedings. He concluded that the Commission should not give its "official bold-face imprimatur" to arbitration provisions. The Commission, however, is not persuaded that the informal nature of these proceedings necessarily makes them unfair and believes that usually such procedures are efficacious methods of settling disputes. However, the Commission has amended the cautionary language, as set forth below.

Another commentator said that "it is not a desirable practice for governmental agencies to prescribe the wording of [private] contracts." The Commission does not take issue with this comment, but believes that proposed § 180.3 is necessary to achieve an informed consent without which it believes the public policy evidenced by the Act would be thwarted.

[14] *See, e.g.*, Home Bldg. & Loan Assoc. v. Blaisdell, 290 U.S. 398 (1934). O'Gorman & Young, Inc. v. Hartford Fire Ins. Co., 282 U.S. 251 (1931); Chicago, B. & Q. R. Co. v. McGuire, 219 U.S. 549 (1911); *See also* Hardware Dealers Mutual Fire Ins. Co. v. Glidden Co., 284 U.S. 151 (1931); Veix v. Sixth Ward Bldg. & Loan Ass'n, 310 U.S. 32 (1940).

[15] U.S. Const. art. I, section 10.

[16] *See, e.g.*, Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry., 294 U.S. 648 (1935).

[17] *See, e.g.*, Calder v. Bull, 3 Dall. 386 (1798). *See generally* 1 C. Antieau, *Modern Constitutional Law* sections 5:133–139 (Law Co-op 1969). The Supreme Court has consistently held that not all retrospective civil statutes are unconstitutional, but only those which, upon a balancing of the considerations on both sides, are felt to be unreasonable. *See, e.g.*, Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945); League v. Texas, 184 U.S. 156 (1902). *See generally*, Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692 (1960). *See also supra* note 14 accompanying text.

[18] The Commission wishes to note that it carefully considered the alternative to invalidating pre-dispute arbitration agreements suggested by these commentators—to limit proposed § 180.3(b) to agreements entered after the effective date of the proposed rule. However, the Commission blieves that customers who have already signed arbitration agreements may need the protection afforded by proposed § 180.3(b) as much as customers who may enter arbitration agreements in the future, and is not persuaded that the convenience of futures commission merchants and other registrants is a sufficient reason to discriminate between customers on the basis of when they signed arbitration agreements.

[19] H.R. Rep. No. 93-975, 93rd Cong., 2d Sess. 22 (1974).

is based upon the following: (1) Since pre-dispute arbitration agreements are used by the entire industry, such agreements would effectively preclude a customer from seeking reparations as provided in section 14 of the Act; would negate the meaning of "voluntary" in section 5a(11) of the Act and would deprive commodity customers of private rights of action in courts of law under the Act;[20] thus depriving customers of the remedial effects of the 1974 amendments to the Act; (2) Since the Commission has been advised that futures commission merchants will not deal with customers who do not sign pre-dispute agreements,[21] there exists a pattern of systematic refusals to deal except in circumstances which eliminate certain basic rights of customers; and (3) Certain commodity customers who are unsophisticated are compelled to sign such agreements under conditions which suggest a lack of informed consent and the imposition of a contract of adhesion on them to their detriment.[22]

(C) These commentators said that the question whether the execution of an arbitration agreement is voluntary and a result of informed consent by a customer should be determined by courts on a case-by-case basis, not by the use of cautionary language.

Proposed § 180.3(b) did not, and was not intended to eliminate the role of courts in assuring that the execution of an arbitration agreements is voluntary. Rather, proposed § 180.3(b) sets certain minimum requirements for pre-dispute arbitration agreements (e.g., a prohibition on refusals to deal, cautionary language, etc.) to help assure an informed consent by customers. The courts still must decide whether the agreement was otherwise voluntary. The Commission recognizes the possibility that in some cases, the execution of pre-dispute arbitration agreements may be involuntary under applicable state or federal law, notwithstanding that the requirements of proposed § 180.3(b) are satisfied.

(D) These commentators expressed the view that the Commission's legal authority is limited to promulgation of rules concerning contract market arbitration procedures and that section 5a (11) of the Act does not authorize the Commission (1) to prohibit the use of pre-dispute arbitration agreements that "confer jurisdiction on alternative arbitration forums, such as the New York Stock Exchange or the American Arbitration Association," or (2) to "make § 180.5 of the Commission's rules applicable to all arbitration forums upon which the parties may confer jurisdiction other than [a contract market arbitration procedure]."

The Commission has previously stated that proposed § 180.3(b) would be adopted under the general rule-making authority granted to the Commission by section 8a of the Act, in order to effectuate the legislative intent of the 1974 amendments to the Act.[23] And, the provision that makes § 180.5 applicable to all arbitration forums is not, as these commentators suggested, tantamount to imposing the Commission's jurisdiction and procedural requirements on the New York court or on any other state court system. Proposed § 180.3(b)(5) simply prohibits pre-dispute arbitration agreements that would require a customer to submit a dispute for settlement pursuant to procedures that do not meet minimal safeguards for a fair and equitable procedure.

(E) Two of these commentators said that proposed § 180.3(b)(1), which would prohibit a registered person from refusing to do business with a customer solely because the customer declines to sign a pre-dispute arbitration agreement, "amounts to a denial of the fundamental freedom of contract;" contravenes the Constitutional prohibition against involuntary servitude; and "seems contrary to the recent public outcry against additional regulation."

The objective of proposed § 180.3(b)(1) is, of course, to assure "voluntary" agreements by customers to arbitrate. During the Commission's oral hearing on March 5, 1976, several futures commission merchants testified they would refuse to deal with persons who declined to sign binding arbitration agreements contained in customer account agreement forms. This practice, which the Commission believes may be followed by a substantial segment of the entire industry, effectively precludes a voluntary act by customers, since they are frozen out of the market unless they sign pre-dispute arbitration forms. The Commission carefully weighed these considerations and believes that its requirements are necessary in light of the concerted refusal to deal. Thus the Commission is not persuaded that proposed § 180.3(b)(1) amounts to the imposition of involuntary servitude or that it is an example of "over-regulation" by government. It is true that proposed § 180.3(b)(1) will affect contractual freedom, but it will serve to enhance, not restrict, the freedom of contracting parties for whose protection relevant provisions of the Act were adopted: "Freedom of contract" does not include freedom for one party to impose contracts of adhesion upon others. The Commission believes that in view of the legislative history of the Act, particularly of the 1974 amendments, and the testimony adduced at the Commission's March 5, 1976 hearing, the proposed rule is reasonably necessary to accomplish the objectives of the Act. Therefore, the Commission has determined to exercise its general rule-making authority under section 8a of the Act by adopting § 180.3(b)(1) in substantially the same form as previously proposed.

(5) Several commentators said that it would be very expensive for futures commission merchants to comply with proposed § 180.3(b); it was estimated that the costs of printing new arbitration agreements, mailing and follow up correspondence to assure a response and other related expenses would be between $7,000 and $11,000 for a futures commission merchant with a significant amount of commodity customers. The Futures Industry Association suggested that the Commission allow registrants to use a "negative option letter", a letter stating that unless the customer responds negatively within some period of time, their arbitration agreement will be deemed to be modified so as to conform the same in all respects with the Commission's rules. If this would be less costly than a positive affirmation, the Commission would not object to the use of a negative option letter in the case of existing arbitration agreements, provided the customer is fully apprised of the terms of the modified arbitration agreement. All new customer agreements will, of course, incorporate the new requirements.

(6) There was also criticism of the requirement in proposed § 180.3(b)(3) that a customer elect to seek reparations within 30 days after the futures commission merchant or other registered person notifies the customer that the registrant intends to demand arbitration under the agreement. One commentator said that, as a practical matter, customers could not be expected to act within 30 days, particularly if they seek legal counsel, and suggested that the period should be extended to 90 days. Another commentator said that the thirty-day waiting period could be easily confused with the twenty-day period provided by New York law for filing an application in court to stay arbitration, and suggested that proposed § 180.3(b)(3) be amended to conform to New York law.

The Commission has amended proposed § 180.3(b)(3) and the cautionary language in § 180.3(b)(4) to require that a customer elect reparations within 45 days. The Commission now believes that 20 or 30 days is too short a period, but that a 90-day period would undermine one of the purposes of arbitration—the prompt settlement of disputes. The Commission does not believe that conforming the time period to New York law would eliminate any confusion that might exist, since other states no doubt have different time periods than those provided by New York law.

(7) One commentator suggested that, consistent with the Congressional intent evidenced by section 5a(11) of the Act, customers should have the ability to demand that futures commission merchants and other registrants submit a dispute to contract market arbitration or other dispute settlement procedures

[20] *See, e.g.*, Case & Co., Inc. v. Board of Trade of the City of Chicago, 523 F.2d 355, 360 (7th Cir. 1975); Goodman v. H. Hentz & Co., 265 F. Supp. 440 (N.D. Ill. 1967).

[21] See 41 Fed. Reg. 5120 (February 11, 1976).

[22] Moreover, courts will frequently defer to the contemporaneous construction given to a regulatory statute by an agency entrusted with its enforcement. See Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396, 408 (1961).

[23] 40 F.R. 54430 (November 24, 1975).

without regard to or in the absence of any arbitration agreement between the customer and registrant. As adopted, Part 180 does not contain a provision that a contract market require its members, at the behest of customers, to submit disputes for settlement under the procedures established by the contract market under section 5a(11) of the Act irrespective of any arbitration agreement between the customer and the member.

The Commission believes that if contract markets establish procedures which do not contain such a requirement, the purpose of section 5a(11)—to provide customers with a contract-market forum to settle disputes—could be frustrated by members who choose to ignore the procedures. The Commission leans to the view that contract markets should impose such a requirement on their members. However, the Commission requests comment on (1) the need for the Commission to amend Part 180 so as to require contract markets to impose such requirements on their members and (2) whether such an amendment would be consistent with the voluntary nature of arbitration contemplated by section 5a (11).

(8) One commentator stated that it appeared that proposed § 180.3 would encompass the arbitration of disputes on foreign exchanges, such as the London Metals Exchange. The Commission's rules relating to arbitration and other dispute settlement procedures were intended to be and are applicable only to claims or grievances arising out of transactions effected on contract markets—that is, boards of trade designated as contract markets by the Commission under the Act. To make this absolutely clear, the Commission is concurrently amending § 180.1 so as to clarify the scope of the terms "claim or grievance" and "customer." [24]

In addition to the amendments that have been made as a result of the comments discussed above, the Commission made a number of minor and technical changes in the text of § 180.3, as follows:

AMENDMENTS TO § 180.3(a)

The first sentence of § 180.3(a) was amended by adding the phrase "or of the arbitration or other dispute settlement agreements specified in an agreement under subparagraph (b)(3) of this section" before the words "shall be voluntary." Previously proposed § 180.3(b) implicitly made "voluntariness" a requirement for all customer dispute settlement procedures covered by the rule, not just the procedures established by contract markets, and the new phrase simply states that requirement.

AMENDMENTS TO § 180.3(b)

Section 180.3(b) has been amended by deleting from the first sentence the phrase "or any other person registered with the Commission under the Act." The Commission did not intend that § 180.3 apply to commodity trading advisors or commodity pool operators: the phrase "or any other person registered with the Commission * * *" was inadvertently carried over from an earlier draft of the proposed rule, and has thus been deleted. However, the Commission intends to consider adopting rules governing the settlement of disputes between customers and commodity trading advisors and pool operators at a later date.

Proposed § 180.3(b) has also been amended to make clear that predispute arbitration agreements are invalid to the extent that they require a waiver of the right to seek reparations: the reparations remedy can only be waived after a dispute arises. The previously proposed rule indirectly stated this in § 180.3(c)(3) and in the cautionary language required by § 180.3(c)(4); however, a new introductory sentence to § 180.3(c)(3) has been adopted to eliminate any confusion about the effect of the rule in this regard.

AMENDMENTS TO § 180.3 (c) AND (d)

Paragraphs (c) and (d) are the same as previously proposed §§ 180.3 (c) and (d), respectively. In this connection, it should be noted, however, that the Commission is amending the terms "claim or grievance" used in these paragraphs and defined in § 180.1(a). See 41 FR 42942, September 29, 1976. The amendment deletes the phrase "which is the forum for the settlement procedure" in the first sentence of that section. That phrase was inadvertently carried over from an earlier draft of the proposed rule. It creates a possibly confusing ambiguity and, accordingly, has been deleted. The amendment does not affect any substantive rights under paragraphs (c) and (d).

Rule § 180.3 will become effective November 29, 1976. Since it would be in the public interest for all the Commission's rules governing contract market arbitration and other dispute settlement procedures to become effective on the same date, the Commission has decided to delay the effective date of rules §§ 180.1, 180.2, 180.4, 180.5 and 180.6 as well.

In consideration of the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by adding a new § 180.3 to Part 180, as follows:

§ 180.3 Voluntary procedure and compulsory payments.

(a) The use by customers of the dispute settlement procedures established by contract markets pursuant to the Act or this Part or of the arbitration or other dispute settlement procedures specified in an agreement under paragraph (b)(3) of this section shall be voluntary. The procedures so established shall prohibit any agreement or understanding pursuant to which customers of members of the contract market agree to submit claims or grievances for settlement under said procedures prior to the time when the claim or grievance arose, except in accordance with paragraph (b) of this section.

(b) No futures commission merchant, floor broker or associated person shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time the claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the futures commission merchant, floor broker or associated person;

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and other provisions specified in this section;

(3) The agreement may not require the customer to waive the right to seek reparations under Section 14 of the Act and Part 12 of these regulations. Accordingly, the customer must be advised in writing that he or she may seek reparations under Section 14 of the Act by an election made within 45 days after the futures commission merchant, floor broker or associated person notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when the futures commission merchant, floor broker or associated person notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparation proceedings, the claim or grievance will be subject to the preexisting arbitration agreement and must also be advised that aspects of the claims or grievances that are not subject to the reparations procedure (i.e. do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the preexising arbitration agreement.

(4) The customer agreement must contain the following cautionary language printed in large bold-face type:

WHILE THE COMMODITY FUTURES TRADING COMMISSION (CFTC) RECOGNIZES THE BENEFITS OF SETTLING DISPUTES BY ARBITRATION, IT REQUIRES THAT YOUR CONSENT TO SUCH AN AGREEMENT BE VOLUNTARY. YOU NEED NOT SIGN THIS AGREEMENT TO OPEN AN ACCOUNT WITH [name]. See 17 CFR 180.1–180.6.

BY SIGNING THIS AGREEMENT, YOU MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW, BUT YOU ARE NOT WAIVING YOUR RIGHT TO ELECT AT A LATER DATE TO PROCEED PURSUANT TO SECTION 14 OF THE COMMODITY EXCHANGE ACT TO SEEK DAMAGES SUSTAINED AS A RESULT OF A VIOLATION OF THE ACT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF [name] INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PRE-

[24] Rules 180.1, 180.2, 180.4, 180.5 and 180.6 will now go into effect at the same time as Rule 180.3—sixty days after publication in the FEDERAL REGISTER. See 41 FR 42947, September 29, 1976.

FER TO REQUEST A SECTION 14 "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL STILL HAVE 45 DAYS IN WHICH TO MAKE THAT ELECTION.

(5) If the agreement specifies a forum for settlement other than a procedure established pursuant to section 5a(11) of the Act or this Part, the procedures of such forum must comply with the requirements of § 180.5.

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

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

Although these rules become effective November 29, 1976, the Commission encourages interested persons to submit written comments or suggestions on the rules. Materials submitted will be evaluated and considered with a view to amendment in appropriate cases. Comments should be directed to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attn: Secretariat.

(Sections 5a(11) and 8a of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 7a(11), 12a (Supp. IV, 1974).)

Issued in Washington, D.C. on September 24, 1976.

By the Commission.

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

[FR Doc.76-28481 Filed 9-28-76;8:45 am]

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Extension of Time

The Commodity Futures Trading Commission has decided to postpone until November 29, 1976, the effective date of §§ 180.1, 180.2, 180.4, 180.5 and 180.6 of its rules governing contract market arbitration and other dispute settlement procedures, which were adopted by the Commission on June 25, 1976. See 41 FR 27520 (July 2, 1976). These rules originally were to become effective on September 30, 1976. However, § 180.3 of the Commission's rules governing certain aspects of contract market arbitration and other dispute settlement procedures is to become effective in sixty days. See 41 FR 42942, September 29, 1976.

The Commission believes it would be in the public interest for all of its rules governing contract market arbitration and other dispute settlement procedures to become effective on the same date. For that reason, the Commission has decided to delay the effective date of §§ 180.1, 180.2, 180.4, 180.5 and 180.6 to November 29, 1976.

(Sections 5a(11) and 8a of the Commodity Exchange Act, as amended, 7 U.S.C. §§ 7a (11), 12a (Supp. IV, 1974).)

Issued in Washington, D.C. on September 24, 1976.

By the Commission.

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

[FR Doc.76-28483 Filed 9-28-76;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 75N-0067]

PART 310—NEW DRUGS

Radioactive Biological Products; Further Extension of Time for Continued Commercial Distribution

The Food and Drug Administration (FDA) is further extending the time to permit continued commercial distribution of certain radioactive biological products pending completion of the review of applications for product licenses submitted to FDA for such drugs, effective September 29, 1976.

In the FEDERAL REGISTER of August 20, 1976 (41 FR 35171), the Commissioner of Food and Drugs extended the time for continued commercial distribution of those radioactive drug products, including radioactive biological products, for which a new drug application or application for product license had been submitted to FDA as provided for in § 310.503 (21 CFR 310.503) and for which an approvable notice had been issued by FDA on or before August 20, 1976. The extension was applicable until the application was approved, until the issuance of a nonapprovable notice by the agency, or until November 20, 1976, whichever occurred first.

The radioactive biological products to which this notice applies, unlike other radioactive drug products, have been subject to review within FDA by both the Bureau of Biologics and the Bureau of Drugs in accordance with the regulation published in the FEDERAL REGISTER of July 25, 1975 (40 FR 31311). The date specified in the August 20, 1976 notice has not allowed sufficient time for both Bureaus to review all the applications for these radioactive biological products. The Commissioner has thus determined that continued commercial distribution should be permitted for radioactive biological products containing the isotopes listed in § 310.503(f)(1) for which an application for product license was submitted to FDA before August 25, 1975 and for which completion of the review of the application by FDA is pending, until either the issuance of a nonapprovable notice for the application or October 20, 1976, whichever occurs first.

If, however, an approvable notice is issue on or before October 20, 1976, a manufacturer many continue to market the radioactive biological product without an approved application until the application is approved, the issuance of a nonapprovable notice by the agency, or until January 20, 1977, whichever occurs first, This extended time will prevent any interruption in the availability of these currently marketed radioactive biological products. The Commissioner believes maintaining the continued availability of these products for this limited period of time is in the interest of the public health. Applicants who have submitted biological product license applications that are still in the review process have been notified in writing of this extension of time.

Because the extended time is necessary solely to relieve an administrative burden within FDA and because the extended time imposes no additional burden on the medical community or on marketers of these important currently marketed radioactive biological products and permits the necessary continued commerical distribution of such products, the Commissioner therefore finds, for good cause, that notice and public procedure are not required for promulgation of this amendment.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701 (a), 52 Stat. 1052–1053, as amended, 1055 (21 U.S.C. 355, 371(a)), the Public Health Service Act (sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262)), 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 310 is amended in § 310.503 by revising paragraph (f)(5) to read as follows:

§ 310.503 Requirements regarding certain radioactive drugs.

* * * * *

(f) * * *

(5)(i) Except as provided in paragraph (f)(5)(ii) of this section, the exemption referred to in paragraph (a) of this section, as applied to any drug containing any of the isotopes listed in paragraph (f)(1) of this section in the "chemical form" and intended for the uses stated, for which drug a new drug application or "Notice of Claimed Investigational Exemption for a New Drug" was submitted to the Bureau of Drugs on or before August 25, 1975 is terminated on August 20, 1976, unless an approvable notice was issued on or before August 20, 1976, in which case the exemption is terminated either upon the subsequent issuance of a nonapprovable notice for the new drug application or on November 20, 1976, whichever occurs first.

(ii) The exemption referred to in paragraph (a) of this section, as applied

to any biologic containing any of the isotopes listed in pargaraph (f)(1) of this section in the "chemical form" and intended for the uses stated, for which biologic an application for product license or "Notice of Claimed Investigational Exemption for a New Drug" was submitted to the Bureau of Biologics on or before August 25, 1975 is terminated on October 20, 1976, unless an approvable notice was issued on or before October 20, 1976, in which case the exemption is terminated either upon the subsequent issuance of a nonapprovable notice for the new drug application or on January 20, 1977, whichever occurs first.

* * * * *

Effective date: This regulation shall become effective September 29, 1976.

(Secs. 505, 701(a), 52 Stat. 1052–1053, as amended, 1055 (21 U.S.C. 355, 371(a)); (sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262)).)

Dated: September 23, 1976.

JOSEPH P. HILE,
Acting Associate Commissioner for Compliance.

[FR Doc.76-28438 Filed 9-28-76;8:45 am]

SUBCHAPTER E—ANIMAL DRUGE, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Griseofulvin Capsules

The Food and Drug Administration is amending the regulation providing for the use of griseofulvin capsules covered by a new animal drug application (NADA) 47-368V, which is the subject of a notice of withdrawal of approval published elsewhere in this issue of the FEDERAL REGISTER.

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 of Food and Drugs (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 520 is amended in § 520.1100 *Griseofulvin* by deleting paragraphs (c)(2) and (d)(2) and designating them as "Reserved."

Effective date: This amendment shall be effective September 29, 1976.

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

Dated: September 21, 1976.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.76-28445 Filed 9-28-76;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING

[Docket No. R-76-417]

EXPERIMENTAL FINANCING

Interim Rule

Section 308 of the Housing and Community Development Act of 1974 amended the National Housing Act by adding a new Section 245, entitled "Experimental Financing" (12 USC 1715 z-10). The amendment authorizes the Secretary to insure on an experimental basis, pursuant to any provision of Title II of the National Housing Act, mortgages and loans with provisions of varying rates of amortization corresponding to anticipated variation in family income to the extent he determines such mortgages or loans (1) have promise for expanding housing opportunities or meet special needs, (2) can be developed to include any safeguards for mortgagors or purchasers that may be necessary to offset special risks of such mortgages, and (3) have a potential for acceptance in the private market. The outstanding aggregate principal amount of mortgages which are insured pursuant to this section may not exceed one per centum of the outstanding aggregate principal amount of mortgages and loans estimated to be insured during any fiscal year under the Title. A mortgage or loan may not be insured pursuant to this section after September 30, 1977, except pursuant to a commitment entered into prior to such date.

On August 18, 1975, the Department published a request at 40 FR 34625 for proposals setting forth Variable Mortgage Payment (VMP) plans. As a result, the Department received 37 proposals, 14 of which complied in principle with the guidelines stated in the request. In addition, the Department received a number of letters commenting generally on various aspects of the program.

The amendments now being adopted are the result of the Department's review of each response submitted and represent an effort to accommodate, as fully as possible, within the existing statutory framework, the various elements contained in the proposals. New §§ 203.45 and 203.436 are being added to Subparts A and B, respectively, of Part 203 and new §§ 234.75 and 234.259 are being added to Subparts A and B, respectively, of Part 234. The new § 203.436 is also being incorporated by reference in § 234.255 and §§ 221.1, 221.251 and 235.1 and 235.201 are amended to exclude graduated payment mortgages since experimental financing is not intended to apply to either the Moderate Income Mortgage Insurance program under Part 221 or the Mortgage Insurance and Assistance Payments Program under Part 235. This interim rule does not change the amount of or method of computing mortgage insurance premiums; however, since most payment plans under Section 245 result in increasing outstanding principal balances in the early years, mortgage insurance premiums over those periods will increase rather than decrease as is the case under level payment mortgages.

The Department has determined that the benefits of this program should be available to the public as soon as possible and is, therefore, issuing these amendments as an interim rule effective November 1, 1976, the earliest date by which the Department can be prepared to process applications under the program. In order to encourage further comment with respect to the experimental financing program, and to permit the public to address responses to more specific provisions, an interim rule is being issued at this time. Interested persons are invited to participate in this rule making by submitting written data, views and arguments with respect to these amendments. Communications should be identified by the above docket number and title, and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material received on or before November 15, 1976 will be considered before adoption of the final rule in this program. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

To highlight the principal features of the Experimental Financing Program, mortgages will be insured under Sections 203b and 234(c) of the National Housing Act (12 U.S.C. 1709(b) and 1715y(c)) pursuant to Section 245 of the Act (12 U.S.C. 1715z-10) and must meet the requirements of those provisions of the Act other than as specifically excepted in the instant regulations. Five specific plans are authorized. Three plans will permit five years of increasing payments at 2½, 5 and 7½ percent annually at the outset and two plans will permit ten years of increasing payments at 2 and 3 percent annually. Payment amounts will be level each year and adjusted annually for the first 5 or 10 years as the plan may call for.

Starting in the 6th year for the 5-year plans and in the 11th year for the 10-year plans the payments will be level in amount for the remaining term of the mortgage.

The minimum downpayment required under this program will be somewhat greater than required under the standard level payment mortgage. This is required because the outstanding principal due on a mortgage under this program will increase during the initial years. The additional downpayment will insure that the outstanding mortgage balance at no time exceeds the maximum mortgage limit for the Section 203(b) or 234(c) Program, as the case may be.

The underwriting requirements will be the same as those specified for the Section 203(b) and 234(c) Programs, except each borrower must certify that he or she fully understands the obligation undertaken. Mortgage credit review for the purpose of determining eligibility will consider first year income and expense data for evaluation purposes.

A Finding of Inapplicability of Section 102(2)(c), National Environmental Policy Act of 1969, has been made with regard to this interim rule in accordance with HUD Handbook 1390.1. A copy of the Finding of Inapplicability is available for public inspection during regular business hours at the above address. Further, it is hereby certified that the economic and inflation impacts of this interim rule has been carefully evaluated in accordance with OMB Circular A-107. Accordingly, Chapter II of Title

24 of the Code of Federal Regulations Parts 203, 234, 221 and 235 is amended as set forth below:

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

1. Part 203 is amended by adding §§ 203.45 and 203.436 to Subparts A and B respectively as follows:

§ 203.45 Eligibility of graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) The mortgage may provide that any interest which accrues and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(b) The mortgage amount, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not exceed the limits prescribed in §§ 203.18 (a) and 203.18(b).

(c) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest may increase annually for a period of five years at a rate of 2½ percent, 5 percent or 7½ percent or for a period of ten years at a rate of 2 percent or 3 percent. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases of payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(d) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(e) Sections 203.21, 203.43, 203.43a, 203.43b, 203.44, and 203.50 through 203.102 shall not be applicable to this section.

(f) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245 of the National Housing Act.

§ 203.436 Claim procedure—graduated payment mortgages.

All of the provisions of this subpart are applicable to mortgages insured under the provisions of § 203.45 except as provided in this section.

(a) "Beginning of Amortization" means the date one month prior to the date of the first monthly payment to principal or interest.

(b) The phrases "unpaid principal balance of the loan" or "principal of the mortgage which was unpaid" as used in this subpart, shall be construed to refer to the outstanding mortgage amount as increased by any accrued mortgage interest which was unpaid pursuant to a financing plan approved by the Secretary.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

2. In § 221.1, paragraph (a) is amended by adding a new excepted provision as follows:

§ 221.1 Incorporation by reference.

(a) * * *

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

3. In § 221.251 paragraph (a) is amended by adding a new excepted provision as follows:

§ 221.251 Incorporation by reference.

(a) * * *

§ 203.436 Claim procedure—graduated payment mortgages

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

2. Part 234 of Chapter II is amended by adding a § 234.75 to Subpart A thereof as follows:

§ 234.75 Eligibility of graduated payment mortgages.

A mortgage containing provisions for varying rates of amortization corresponding to anticipated variations in family income shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(a) The mortgage may provide that any interest which accrues, and which is unpaid pursuant to a financing plan approved by the Secretary, shall be added to the principal obligation of the mortgage.

(b) The mortgage amount, when added to all accrued mortgage interest which will be unpaid pursuant to a financing plan approved by the Secretary, shall not exceed the limits prescribed in §§ 234.27 (a) and 234.27(c).

(c) The mortgage must contain complete amortization provisions satisfactory to the Secretary requiring monthly payments by the mortgagor not in excess of his reasonable ability to pay as determined by the Secretary. The sum of the payments to principal and/or interest may increase annually for a period of five years at a rate of 2½ percent, 5 percent or 7½ percent or for a period of ten years at a rate of 2 percent or 3 percent. Any required increase in payments shall occur on the anniversary date of the beginning of amortization. On the termination of the period of annual increases of payments, the sum of the payments to principal and interest in each month shall be substantially the same.

(d) The mortgagee shall fully explain to the mortgagor the nature of the obligation undertaken and the mortgagor shall certify that he or she fully understands the obligation.

(e) Sections 234.36 and 234.70 shall not be applicable to this section.

(f) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to Section 245 of the National Housing Act.

3. Section 234.255 is amended by amending paragraph (a) and revising paragraph (b) as follows:

§ 234.255 Incorporation by reference.

(a) *Provisions.* All of the provisions of §§ 203.251 through 203.436 of this chapter (Part 203, Subpart B) covering mortgages insured under Section 203 of the National Housing Act shall apply to mortgages insured under Section 234(c) of the National Housing Act except the following provisions:

* * * * *

(b) *References.* For the purposes of this subpart, all references in §§ 203.251 through 203.436 of this chapter (Part 203, Subpart B) to section 203 of the Act, one- to four-family, and the Mutual Mortgage Insurance Fund, shall be construed to refer to section 234 of the act, one-family unit, and the General Insurance Fund. The term "property" or "each family dwelling unit" as used in §§ 203.251 through 203.436 of this chapter (Part 203, Subpart B) shall be construed to include "the one-family unit and the undivided interest in the common areas and facilities as may be designated".

4. A new § 234.259 is added reading as follows:

§ 234.259 Claim procedure—graduated payment mortgages.

The provisions of § 203.436 of this part are applicable to mortgages insured under the provisions of § 234.75.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROTECT REHABILITATION

7. In § 235.1, paragraph (a) is amended by adding a new excepted provision as follows:

§ 235.1 Incorporation by reference.

(a) * * *

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

8. In § 235.201, paragraph (a) is amended by adding a new excepted provision as follows:

§ 235.201 Incorporation by reference.

(a) * * *

§ 203.436 Claim procedure—graduated payment mortgages.

* * * * *

Effective Date: These amendments are effective November 1, 1976.

Issued at Washington, D.C. September 22, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc.76-28472 Filed 9-28-76;8:45 am]

[Docket No. R-76-383]

§ 235.201 Incorporation by reference.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Computation of Rental Charges When Tenant Will Pay Some or All of Utility Charges

On April 14, 1976 (41 CFR 15703, 15704) the Department issued in Docket Numbers R-76-384 and R-76-383 Notices of Proposed Rulemaking which would amend respectively, Parts 425 and 236 of Title 24. By these amendments, insured projects would base rental charges upon the tenant's paying some or all of the utility costs and being directly billed by utility companies. The Department received four public comments as discussed hereinafter.

The proposed rulemaking in Docket Number R-76-384 with respect to Part 425 is being terminated and a final rule will be issued only in Docket R-76-383 because under a recent administrative reorganization the Department has merged the former Offices of The Assistant Secretary for Housing Production and Mortgage Credit and Assistant Secretary for Housing Management. As a result, regulatory provisions with respect to Housing Management previously set forth in Chapter IV will now only appear in Chapter II. A pending recodification of Title 24 will reflect the changes to Chapters II and IV.

Generally, comments were favorable to the proposed rule. One comment requested inclusion of language to establish clearly the "legality" of checkmeters or individual metering systems. Section 212(2) of the Housing and Community Development Act of 1974 expressly introduces the concept of separate utility metering for dwelling units by providing in 12 USC 1715Z-1(f)(1) for determining the basic rental charge and the Fair Market Rental Charge "on the basis of operating the project without the payment of the cost of utility services used by dwelling units" determined by the Secretary to "have separate utility metering." Thus, there is clear authority to provide for metering to enable separate billing of tenants by utility companies. Authority to meter for other purposes is not clear, as would be the case, for example, if project management wished to surcharge tenants for excess consumption. However, this amendment contemplates only separate metering and we do not consider it appropriate to interpret the legality of checkmetering in any broader sense than that intended by Congress and implemented by this rule.

Another comment requested that the final rule emphasize the adverse consequences to tenants who excessively use utilities. We consider the cost impact of extravagant utility consumption upon the user is clear from the very nature of the rule, but we expect that this consideration will also be brought to the attention of individual tenants by project management.

Another comment pointed out the rule's varied mention of "utility charge", "cost of utility service," and "utilities allowance" and we have adopted more consistent references. The comment also recommended a survey of current utility consumption rates against which to compare statistically averaged rates, with a six-month transition period for occupied units. The comment postulated that under a proper allocation no more than 25% of the tenants in a given project should incur excess charges and urged that the rule establish criteria not only for revising, but also for initially establishing, the allowance. The Department has set forth what it considers to be adequate basic procedures for implementing section 212(2) with more detailed explanations for computing allowances set fort.. in Handbook 4350.1, copies of which are available from HUD's central and field offices. Any computation of an appropriate utility allowance must be predicated upon a knowledge of current utility consumption rates with adjustments for various factors, and the procedures so reflect. It is not intended to work a hardship upon tenants of existing units by imposing upon them credits to rents that are unrealistic in light of current consumption and we do not think the rule as adopted will have that effect.

Finally, one comment urged the Department to prepare an Environmental Impact Statement because, for reasons the comment did not set forth, "the allocation and responsibility for utility charges and the method of giving credit when they are paid by tenants have substantial environmental consequences." The Department, however, has determined that this rule will not substantially effect the quality of the environment. As explained in the rulemaking notice, a copy of the finding and its reasons is available for public inspection in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410. The comment further questioned HUD's authority to apply the computation to existing projects. We do not view Section 212(2) as prospective only in its applicability and we consider that inclusion of existing projects is in fact contemplated by the present law. Lastly, the comment objected that the proposed rule did not define in adequate terms the method for computing the allowances, a point we have already discussed.

The environmental and economic determinations prepared for promulgation of the notice of proposed rulemaking are adopted for this final rule.

Accordingly, 24 CFR 236.55 is revised to read as follows:

§ 236.55 Rental Charges.

(a) *Approved rental charges.* The mortgagor shall, with the approval of the Secretary, establish and maintain for each dwelling unit the following:

(1) A basic monthly rental charge determined on the basis of operating the project with payments of principal and interest due under a mortgage bearing interest at the rate of one percent per annum, and

(i) with the payment of the cost of utility services used by the dwelling units, when such charges are paid by the project owner, or

(ii) without the payment of the cost of utility services used by the dwelling units, when the units have separate meters and some or all such charges are paid directly by the tenants.

(2) A fair market monthly rental charge determined on the basis of operating the project with payments of principal, interest and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage, and

(i) with the payment of the cost of utility services used by the dwelling units, when the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(i) of this section; or

(ii) without the payment of the cost of some or all utility services used by the dwelling units, when the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(ii) of this section.

(b) *Monthly rental charge.* (1) The monthly rental for each dwelling unit shall be the greater of the basic rental, or

(i) 25 percent of the tenant's adjusted monthly income with respect to a unit for which the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(i) of this section, or

(ii) such amount less than 25 percent of his adjusted monthly income as represents the utility allowance established by the Secretary, based on data originating from the appropriate utility, for the utility charges to be paid by such tenant, but in no case less than 20 percent of the tenant's adjusted monthly income with respect to any units for which the basic monthly rental charge has been determined pursuant to paragraph (a)(1)(ii) of this section.

(2) In no event shall the monthly rental exceed the fair market rental.

(c) *Adjustments in utility allowances.* In the event of any change in utility rates which results in a cumulative increase of 10 percent or more in the cost of those utilities included in the latest approved personal benefit expense, the project owner shall advise the Secretary and request approval of a new allowance for utilities.

(d) *Application of terms.* In the case of a cooperative project, the term "rental charge" as used in this subpart shall mean the charges under the occupancy agreement of members of the cooperative.

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

Effective date: These amendments shall be effective October 29, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing, Federal Housing Administration.

[FR Doc.76-28471 Filed 9-28-76;8:45 am]

[Docket No. R-76-400]

PART 260—INTEREST SUBSIDY GRANTS

Selection and Approval of Applications

On August 18, 1976, at 41 FR 34608, the Department published final regulations with respect to the program authorized under Section 802(c)(2) of the Housing and Community Development Act of 1974, Pub. L. 93-383, 88 Stat. 633, (42 U.S.C. 1440(c)(2)). Under that subsection, the Secretary is authorized to make grants to a total of $600 million, at a rate of not more than $15 million per year, for the benefit of State housing finance or development agencies to subsidize up to 33⅓ percent of the interest payable on their bonds, debentures, notes or other obligations which are made subject to Federal taxation at the election of the State agency and which obligations are used to finance certain development activities. Only eligible taxable obligations, as defined in the regulations, may qualify for the subsidy.

In accordance with § 260.4, *Selection and approval of applications*, applications were received and approved for a total of $11.24 million. Therefore, a total of $3.76 million remains to be obligated. Accordingly, the Department has determined to amend § 260.4 by permitting eligible agencies to apply for interest subsidy grants until the remaining $3.76 million has been exhausted.

The Department has determined that it is unnecessary to publish this amendment for comment, as it does not affect any of the program standards promulgated in the final regulations. Rather, it merely extends the time in which interest subsidy grant applications may be made, and publishing this amendment for comment would only delay the acceptance of applications for the grants, which would not redound to the benefit of eligible applicants.

Since no material changes have been made to the final regulations, the Department has determined that this amendment does not affect the previous finding of inapplicability as to environmental impact. The finding of inapplicability may be inspected during regular business hours in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

NOTE.—It is hereby certified that the economic and inflationary impacts of this amendment have been carefully evaluated in accordance with OMB Circular No. A-107.

Accordingly, Chapter II, Subchapter B of Title 24 of the Code of Federal Regulations, is amended by adding at the end of § 260.4(b), the following sentence:

§ 260.4 Selection and approval of applications.

* * * * *

(b) * * * In the event that the total amount of interest subsidy grants for the period commencing October 1, 1976, and ending September 30, 1977, or for any subsequent annual period, requested by acceptable applications in both the first group and the second group does not exceed $15 million, then that amount not applied for shall remain available, on a first-come, first-served basis, until such amount is exhausted, and the provisions set forth in this part referring to the ranking of applications shall not apply.

* * * * *

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d); Sec. 802(c)(2), Housing and Community Development Act of 1974 (Pub. L. 93-383, 88 Stat. 633 (42 U.S.C. 1440(c)(2))).)

Effective date: September 22, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.76-28470 Filed 9-28-76;8:45 am]

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-380]

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION

Miscellaneous Corrections and Amendments

The Department published final regulations for the Section 8 Housing Assistance Payments Program—New Construction on April 26, 1976, at 41 FR 17468. A number of minor amendments are now being published for effect, as discussed below:

1. A new § 880.101(d) has been added to clarify that housing subsidized under other provisions of the U.S. Housing Act of 1937 is not eligible for assistance under this part.

2. In § 880.102, the definition of the term "handicapped" has been revised to clarify that it includes mentally or physically handicapped persons.

3. Section 880.110(c) has been revised to clarify that when special additional adjustments are approved by HUD, they "shall," rather than "may," be granted.

4. In § 880.114, "Other Federal Requirements," the statutory citation for the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291) has been corrected.

5. Section 880.207(b)(2) has been revised to provide that the field office shall make a preliminary debt service analysis as part of the Technical Processing, rather than as part of the Preliminary Evaluation. The provision is also being revised to state that if the field office is unable to approve the mortgage amount requested, it shall notify the Owner of the maximum amount which is tentatively approvable, pursuant to § 880.208(e)(4) or in the notification of selection in accordance with § 880.208(h).

6. In response to a comment, § 880.208(j) has been clarified to provide that if, at any time after completing selection of Preliminary Proposals, the contract authority in the NOFA for an area is not fully committed or if a selected Proposal fails to result in an Agreement, the field office may proceed in accordance with specified alternatives. Some field offices interpret the regulations to require publication of another NOFA if contract authority becomes available because a selected Proposal is withdrawn. This result was not intended. Conforming changes have been made in § 880.210(c)(3), in new § 880.210(e), in § 880.211(a), and in § 880.211(b)(4) to reflect the fact that § 880.208(j) states in one place in the regulations the alternatives available where there is residual contract authority.

Since items 1, 2, 3, and 6 are clarifications, item 4 is a technical correction and item 5 is only a matter of internal HUD field office procedure, there is no need for public procedures. Accordingly, these revisions are being made effective immediately.

A finding of inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. In addition, a finding of inapplicability of inflation impact statement requirements has been made in accordance with HUD procedures. Copies of these findings will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Part 880 is hereby amended as follows:

1. A new § 880.101(d) is added to read:

§ 880.101 Applicability and scope.

* * * * *

(d) Housing subsidized under other provisions of the Act is not eligible for assistance under this Part."

§ 880.102 [Amended]

2. The second sentence of the definition of "Eligible Family ("Family") in § 880.102 is revised to read: The term Family includes an elderly, mentally or physically handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in section 3(2) of the Act.

3. Section 880.110(c) is revised to read as follows:

§ 880.110 Rent adjustments.

* * * * *

(c) *Special additional adjustments.* Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

§ 880.114 [Amended]

* * * * *

4. In § 880.114, "Other Federal Requirements," the citation in paragraph (e) for the Archeological and Historic Preservation Act of 1974 is revised to read: (Pub. L. 93–291).

5. Section 880.207(b)(2) is revised to read:

§ 880.207 Preliminary proposals indicating HUD–FHA Mortgage Insurance.

* * * * *

(b) * * *

(2) As part of the Technical Processing (See § 880.208) of Proposals involving HUD mortgage insurance, the field office shall make a preliminary debt service analysis to determine the tentative approvable mortgage amount and maximum supportable cost based on the field office's estimate of market rentals, operating expenses and taxes for the proposed project. If the field office is unable to approve the mortgage amount requested, it shall notify the Owner in accordance with § 880.208(e)(4) or in accordance with § 880.208(h), of the maximum mortgage amount which is tentatively approvable and shall advise the Owner to inform the field office within the specified time whether he wishes processing of the Proposal to proceed based on the revised mortgage amount.

* * * * *

6. Revise § 880.208(j) to read:

§ 880.208 Preliminary Evaluation, Technical Processing and Selection of Preliminary Proposals.

* * * * *

(j) *Use of Residual Contract Authority.* If at any time after completing selection of Preliminary Proposals, the contract authority indicated in the NOFA for an allocation area is not fully committed or if a selected Proposal fails for any reason to result in an Agreement, the field office may:

(1) Give further consideration to Proposals which were either not found eligible for Technical Processing, or as a result of such processing were found not approvable, or were found approvable but were not selected as a result of the ranking, and afford the Owners an opportunity to remedy any deficiencies, including substitution of alternate sites;

(2) Process Proposals not yet considered for projects to which the deadline does not apply (see § 880.203(c)(5));

(3) Publish another NOFA for the allocation area; or

(4) Reallocate the unused contract authority to another allocation area.

7. Revise § 880.210(c)(3) and add a new § 880.210(e) to read:

§ 880.210 Evaluation of final proposals.

* * * * *

(c) * * *

(3) *Not approved.* If a Final Proposal is not approved or if the conditions for approval under paragraph (c)(2) of this section are not met, HUD shall so advise the Owner.

* * * * *

(e) *Use of Residual Contract Authority.* See § 880.208(j).

8. Revise § 880.211(a) and (b)(4) to read:

§ 880.211 Owner's acceptance of notification and submission of architect's certification.

(a) *Owner's Acceptance.* Upon receipt by the Owner of the notification of approval of the Final Proposal, the Owner shall return to HUD a copy indicating his acceptance within the time prescribed in such notification (copy to the PHA, if applicable). If the Owner does not accept the notification by the date specified, HUD may rescind the notification.

(b) * * *

(4) If the Owner fails to submit the certification by the date specified in the notification, HUD shall rescind the notification unless it determines that a reasonable extension of time should be granted.

(Sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)); sec. 5(b) of the United States Housing Act of 1937, (42 U.S.C. 1437c (b)); sec. 8 of the United States Housing Act of 1937, (42 U.S.C. 1437f).)

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A–107.

Effective date. These amendments are effective on September 29, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc.76–28487 Filed 9–28–76;8:45 am]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF–30; Reference Notice No. 299]

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Bottles Per Shipping Case

The Bureau published a notice of proposed rulemaking in the FEDERAL REGISTER on June 14, 1976, which proposed that the regulation relating to metric bottles per shipping case be amended. The notice established a 30-day comment period, during which time interested parties were invited to submit written comments on the proposal.

NATURE OF THE PROPOSAL

The Distilled Spirits Council of the United States (DISCUS) petitioned ATF on March 29, 1976, to reduce the number of 200 ml bottles to be packed per shipping case from 60 to 48 bottles. The DISCUS petition stated that the reduction to 48 bottles per case would facilitate palletizing, warehousing and the handling of cases of the 200 ml size. DISCUS also stated that a case of 60 bottles would prevent several industry members from utilizing existing case packing equipment. ATF indicated in the notice that it was receptive to the DISCUS petition; and, therefore, ATF proposed that Part 5 be amended to require that 200 ml bottles be packed 48 to the case.

SUMMARY OF WRITTEN COMMENTS

In response to the notice of proposed rulemaking, 15 industry members submitted written comments to ATF. One of these responses was in favor of maintaining the current requirement for a 60-bottle case. This comment emphasized the long-range benefits to all industry members that a 60-bottle case would achieve. Industry members would realize these benefits, according to the comment, because they would be handling and storing 20 percent fewer cases than they would have to with a 48-bottle regulation (the 20 percent reduction is due to the fact that a 48-bottle case contains 20 percent fewer bottles per case than a 60-bottle case). This comment acknowledged that there would be an initial expense to industry members to change production line equipment, but it argued that these initial expenses would be more than offset by the handling and storage benefits of a 60-bottle case.

ATF received one other comment which did not favor the proopsed 48-bottle case. This response, from the National Liquor Stores Association, Inc., recommended a smaller case size of 24 bottles. It argued that retailers must often make a decision between one of two choices: either the retailer restricts consumer choice by purchasing a limited number of brands in full case lots or the retailer offers a wider variety of choices by purchasing in "split case lots". The disadvantage or "split case lots" is that they are more expensive than full case lots. With a 24-bottle case, the retailer's problem would be largely solved because the full case lot would then be the same as the "split case lot".

Several distillers responded to the notice by commenting that a 60-bottle case would require expensive equipment changes. One large distiller estimated the 60-bottle case would cost it $140,000 for equipment changes plus "* * * an approximate 3 percent loss of productivity amounting to several thousand dollars per year".

Another distiller, who estimated that over 25 percent of its business would be in the new 200 ml size, stated that the 60-bottle case requirement "* * * would mean the expenditure of hundreds of thousands of dollars in capital costs for new case packaging equipment, new conveyors, new case elevators, palletizers, modifications, change parts and control equipment."

One distiller indicated that the 60-bottle case would not fit the extensive conveying equipment it uses to transport cased goods over, under, and across several city blocks from bottling to warehouse facilities. This distiller estimated the installation of new conveying equipment would cost in the six fixtures.

A chain of liquor stores favored the 48-bottle case because a 48-bottle case of the 200 ml size would weigh less than either a 60-bottle case of the 200 ml size or a 48-bottle case of the current ½-pint size. It pointed out that the weight of a case is an extremely important consideration to retailers who handle cases by hand. A bottler made the same point,

adding that "The small bottler who does not have automatic packing equipment will probably have employee complaints and back injuries from hand stacking this [the 60-bottle] case size."

One distiller commented that the size of the pallet for the 60-bottle cases would be difficult for warehousing. Another distiller pointed out that the 200 ml size replaces the ½-pint, which traditionally has been packed 48 bottles to the case. The same distiller also stated that current distribution patterns are based on a 48-bottle case.

The Scotch Whiskey Association supported the 48-bottle case, stating that "member companies of this Association, which comprise virtually all shippers of Scotch Whisky to some 190 overseas markets, currently ship requirements for the 200 ml standard bottle at 48 bottles to the case. Should the proposal to amend the case packing requirement be rejected, these member companies would have to purchase a specially prepared case to hold 60 bottles simply for use for exports of the 200 ml bottles to the United States; substantial extra costs would necessarily be incurred thereby, which, inevitably, would have to be passed on to the consumer".

THE BUREAU'S DECISION

The Bureau has fully considered all comments received and has decided to adopt a 48-bottle case requirement for the 200 ml size.

Nearly all comments indicated that the 60-bottle case would be more costly than the 48-bottle case because of the need for new or modified case-packaging equipment, conveyors, palletizers, etc. Some comments indicated the additional costs associated with the 60-bottle case would go beyond the initial capital expenditures and would involve a continuing loss of productivity over the years.

Members of the bottling and retailing industries pointed out that the 60-bottle case would be significantly heavier than the 48-bottle case. They stated that the heavier cases would be an unreasonable burden on employees handling these cases, particularly on employees of small bottlers and retailers not having mechanized case-handling equipment. As pointed out by the Scotch Whiskey Association, a 60-bottle case requirement would necessitate special equipment for packing exports to the United States, inevitably meaning higher prices for consumers.

As for the proposal by the National Liquor Stores Association for a 24-bottle case, the vast majority of comments received indicated a preference for a 48-bottle case as the most economical and efficient to handle. A 24-bottle case would, of course, mean that the industry would be packaging, handling, and storing twice as many case units as with the 48-bottle case. As a result, the Bureau feels that, even though the 24-bottle case would, in some instances, eliminate the costs of splitting cases for small orders, the 24-bottle case would, overall, be more costly to industry and, ultimately, to consumers.

Because it is desirable to issue this Treasury decision to coincide with the effective date of the new metric standards of fill and because it will enable industry members who convert to the 200 ml size to avoid the considerable expenses involved in changing from one case size to another, it is found that it is unnecessary to issue this Treasury decision subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, this Treasury decision shall become effective on October 1, 1976.

The following regulation is issued under the authority contained in 27 U.S.C. 205 (49 Stat. 961, as amended).

REGULATORY CHANGE

In consideration of the foregoing, 27 CFR Part 5 is amended as follows:

1. Section 5.49(a) is revised to read as follows:

§ 5.49 Bottles per shipping case.

(a) *General.* Distilled spirits, whether domestically bottled or imported subject to the metric standards of fill prescribed in § 5.47a, shall be packed with the following number of bottles per shipping case or container:

Bottle sizes:	*Bottles per case*
1.75 liters	6
1.00 liter	12
750 milliliters	12
500 milliliters	24
200 milliliters	48
50 milliliters	120

* * * * *

The Treasury decision shall become effective on October 1, 1976.

Signed: September 14, 1976.

REX D. DAVIS,
Director.

Approved: September 23, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.76-28428 Filed 9-28-76;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

PART 135—RULES FOR MEASUREMENT OF VESSELS

CFR Correction

On page 272 of title 35, Panama Canal, revised as of July 1, 1976, the center heading "Deck Cargo," and § 135.113 *Deck Cargo* appear in error.

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 622-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Correction

FEDERAL REGISTER Document 76-13111, published at page 18510 in the issue dated Wednesday, May 5, 1976, revoked the Federally promulgated variance provision as it applied to the State of Indiana. The May 5th FEDERAL REGISTER failed to revoke Federal variance provisions which applied to three other states (Iowa, Massachusetts, and Rhode Island). This notice corrects that oversight by revoking 40 CFR Parts 52.829, 52.1131, and 52.2079.

Dated: September 24, 1976.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.76-28374 Filed 9-28-76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-195]

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Subpart 101-26.5—GSA Procurement Programs

INTERIOR PLANNING AND DESIGN SERVICES

This regulation provides policy and procedures for use by Federal agencies requesting assistance for interior planning and design services from GSA.

1. Section 101-26.506 is revised as follows:

§ 101-26.506 Interior planning and design services.

In addition to the assistance provided in the selection of furniture and furnishings as specified in § 101-26.505-7, the GSA Public Buildings Service, through facilities located in each region, will assist Federal activities within the United States, the Commonwealth of Puerto Rico, and the Virgin Islands in various phases of interior planning and design. These services will be provided either directly or through commercial sources. (For services involving space layout, see § 101-17.400.)

2. Section 101-26.506-1 is revised as follows:

§ 101-26.506-1 Types of service.

GSA interior planning and design services consist of data gathering and organizational analysis; development of a space requirements program; softline space plans; development of an interior design program (to include finish materials, furniture and furnishing specifications, and procurement data); and complete floor plans for telephones, electrical outlets, partitions, furniture, and equipment. The items specified for procurement will be selected from approved GSA sources of supply.

3. Section 101-26.506-3 is revised as follows:

§ 101-26.506-3 Submission of requests.

Requests for interior planning and design services shall be submitted on Standard Form 81, Request for Space (illustrated at § 101-17.4901-81), and forwarded to PBS in the GSA regional office serving the geographic area of the

requesting agency. Requests shall include the following information:

(a) Type of space in terms of its use;
(b) Location;
(c) Floor plans, if available;
(d) Occupancy date;
(e) Amount of funds available for the project; and
(f) Name, address, title, and telephone number of requesting official.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date: This regulation is effective on September 29, 1976.

NOTE.—It is hereby certified that the impact does not meet the inflation impact criteria for major rules or regulations.

Dated: September 21, 1976.

JACK ECKERD,
Administrator of General Services.

[FR Doc.76-28386 Filed 9-28-76;8:45 am]

[FPMR Amdt. E-194]

PART 101-32 — GOVERNMENT - WIDE AUTOMATED DATA MANAGEMENT SERVICES

Subpart 101-32.3—Reutilization of Automatic Data Processing Equipment and Supplies

EXCESS ADPE ESTIMATE OF REFURBISHMENT

This amendment establishes a time limit for forwarding excess ADPE refurbishment estimates to the General Services Administration (GSA).

1. Section 101-32.303-2 is amended to read as follows:

§ 101-32.303-2 Considerations for use of excess Government-owned or -leased ADPE.

* * * * *

(a) * * *

(1) When a contract has been awarded or a purchase/delivery order placed against an applicable ADP Schedule contract for ADPE and similar owned excess ADPE becomes available, consideration shall be given to terminating the contract or purchase/delivery order for the convenience of the Government. An evaluation of termination charges, if any, shall be made in addition to the other considerations indicated in this § 101-32.303-2.

* * * * *

2. Section 101-32.306(a) is revised to read as follows:

§ 101-32.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

* * * * *

(a) The SF122 (illustrated at § 101-32.4901-122) shall be signed by an authorized official of the requesting agency when the ADPE is to be used by the agency or by a contractor or grantee of the agency. The SF122 shall also provide the name and telephone number of the agency official to be contacted regarding transportation details.

* * * * *

3. Section 101-32.309-4(a) is revised to read as follows:

§ 101-32.309-4 Guarantee of ADP Fund equipment.

(a) Agencies participating in the leaseback program pay charges for transportation of the equipment to the designated site(s); obtain an estimate of refurbishment to bring the ADP Fund equipment up to maintenance standards; and, within 6 months of the date that GSA sends the ADP Fund lease, forward the estimate of refurbishment to the General Services Administration (CDP), Washington, D.C. 20405.

* * * * *

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Effective date: This regulation is effective on September 29, 1976.

NOTE.—It is hereby certified that the impact does not meet the inflation impact criteria for major rules or regulations.

Dated: September 20, 1976.

JACK ECKERD,
Administrator of General Services.

[FR Doc.76-28385 Filed 9-28-76;8:45 am]

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

[Adm 7900.4 Chge 1]

PART 105-64—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Privacy Act

On August 2, 1976, there was published in the FEDERAL REGISTER (41 FR 32245) a notice of proposed rulemaking clarifying and modifying certain provisions of the GSA regulations implementing the Privacy Act of 1974. Interested parties were given the opportunity to submit, not later than September 2, 1976, written data, views, or arguments on the proposed amendments.

No unfavorable comments have been received, and the proposed changes are hereby adopted without substantive change and are set forth below.

The table of contents for Part 105-64 is amended by adding the following entries:

Sec.

* * * * *

105-64.201a. Procedures for disclosure.
105-64.301-5. Appeal of denial of access within GSA.

* * * * *

Subpart 105-64.7—Assistance and Referrals

105-64.701. Requests for assistance and referral.

1. Section 105-64.002 is amended by adding new paragraphs (i) through (l) as follows:

§ 105-64.002 Definitions.

* * * * *

(i) The term "subject individual" means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

(j) The term "disclosure" means a transfer of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(k) The term "access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(l) The term "solicitation" means a request by an officer or employee of GSA that an individual provide information about himself.

Subpart 105-64.1—General Policy

1. Section 105-64.101-1 is revised to read as follows:

§ 105-64.101-1 Collection and use.

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under GSA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purposes for which the information will be used, the routine uses of the information, and the effects on the individual, if any, of not providing the information. Heads of Services and Staff Offices and Regional Administrators shall ensure that forms used to solicit information are in compliance with the act and these regulations.

(c) *Solicitation of social security number.* Before an officer or employee of GSA requests an individual to disclose his social security number, the officer or employee of GSA shall ensure that either:

(1) The disclosure is required by Federal statute, or;

(2) The disclosure of a social security number was required under statute or regulation adopted before January 1, 1975, to verify the identify of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the GSA officer or employee who requests an individual to disclose his social security account number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting information from third parties.* An officer or employee of GSA shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

2. Section 105-64.101-4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 105–64.101–4 Safeguarding systems of records.

* * * * *

(a) Official personnel folders, authorized personnel operating or work folders, and other records of personnel actions effected during an employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualifications and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnishes an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(b) The system manager, at his discretion, may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

* * * * *

Subpart 105–64.2—Disclosure of Records

§ 105–64.201 [Amended]

1. Section 105–64.201 is amended by replacing in paragraph (b) the words "Pursuant to" with the new words "Required by".

2. Section 105–64.201a is added as follows:

§ 105–64.201a Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requester to obtain disclosure pursuant to § 105–64.201. Upon that verification, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under the provisions of § 105–64.201, he shall deny the request in writing and shall inform the requester of his right to submit his request for review and final determination to the Director of Administration, General Services Administration.

Subpart 105–64.3—Individual Access to Records

1. Section 105–64.301X1(b) is revised to read as follows and a new paragraph (c) is added as follows:

§ 105–64.301–1 Form of requests.

* * * * *

(b) The request shall be in writing and shall bear the legend "Privacy Act Request" both on the request letter and on the envelope. The request letter should contain the complete name and identifying number of the system as published in the FEDERAL REGISTER; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the individual's association with GSA; and any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager or applicable individual shall answer or acknowledge the request within 10 workdays of its receipt by GSA.

(c) The system manager, at his discretion, may accept oral requests for access subject to verification of identity.

2. Section 105–64.301–2 (a) and (b) are revised to read as follows:

§ 105–64.301–2 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the U.S. Civil Service Commission and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualification or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the U.S. Civil Service Commission for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his guardian, or conservator.

* * * * *

3. Section 105–64.301–3 is amended by revising paragraphs (d) and (g) and deleting paragraph (h) as follows:

§ 105–64.301–3 Granting access.

* * * * *

(d) Records will be available for authorized access during normal business hours at the offices where the records are located. A requester should be prepared to identify himself by signature; i.e., to note by signature the date of access and/or to produce other identification verifying the signature.

* * * * *

(g) An individual who wishes to have a person of his choosing review, accompany him in reviewing, or obtain a copy of a record must, prior to the disclosure, sign a statement authorizing the disclosure of his record. The system manager shall maintain this statement with the record.

(h) [Reserved.]

* * * * *

§ 105–64.301–4 [Amended]

4. Section 105–64.301–4 is amended by deleting paragraph (f).

5. Section 105–64.301–5 is added to read as follows:

§ 105–64.301–5 Appeal of denial of access within GSA.

(a) A requester denied access, in whole or in part, to records pertaining to him, exclusive of those records for which the system manager is the Administrator, may file an administrative appeal of that denial. All appeals should be addressed to the Director of Information (AVI), General Services Administration, Washington, DC 20405, regardless whether the denial being appealed was made by a Central Office or a regional official.

(b) Each appeal to the GSA Director of Information shall be in writing. The appeal should bear the legend "Privacy Act—Access Appeal," on both the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Director of Information shall consult with the system manager, the official who made the denial, legal counsel, and such other officials as may be appropriate. If the Director of Information, in consultation with these officials, determines that the request for access should be granted because the subject records are not exempt, he shall immediately either instruct the system manager in writing to grant access to the record in accordance with § 105–64.301–3, or shall grant access himself, and shall notify the requester of that action.

(d) If the Director of Information, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, he shall submit the file on the request and appeal, including his findings and recommendations, to the Deputy Administrator for a final administrative determination.

(e) If the Deputy Administrator determines that access to the record should be granted, he shall immediately instruct the system manager in writing to grant access to the record in accordance with § 105–64.301–3. The Deputy Administrator shall send a copy of his instructions to the Director of Information, who shall notify the requester of that action.

(f) If the Deputy Administrator determines to reject the appeal, he immediately shall notify the requester in writing of that determination. This action shall constitute the final administrative determination on the request for access to the record and shall include:

(1) The reasons for the rejection of the appeal; and

(2) Notice of the requester's right to seek judicial review of the final administrative determination, as provided in § 105–64.408.

(g) The final agency determination will be made no later than 30 workdays from the date on which the appeal is received by the Director of Information. The Deputy Administrator may extend this time limit by notifying the requester in writing before the expiration of the 30 workdays. The Deputy Administrator's notification shall include an explanation for the extention.

6. Section 105–64.302–3 is revised to read as follows:

§ 105–64.302–3 Waiver of fee.

The system manager shall make one copy of a record, up to 50 pages, available without charge to a requester who is an employee of GSA. The system manager may waive the fee requirement for any other requester if the cost of collecting the fee is an unduly large part of, or greater than, the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

Subpart 105–64.6—Exemptions

§ 105–64.602–1 [Amended]

1. Section 105–64.602–1 is revised by changing the designation of the Investigation and Personnel Security Case Files system of records from "GSA/OAD 25" to "GSA/OAD 24."

§ 105–64.602–2 [Amended]

2. Section 105–64.602–2 is amended by changing the designation of the Test Material system of records from "GSA/OAD 21" to "GSA/OAD 20."

1. A new Subpart 105–64.7 is added as follows:

Subpart 105–64.7—Assistance and Referrals

§ 105–64.701 Requests for assistance and referral.

Requests for assistance and referral to the responsible system manager or other GSA employee charged with implementing these regulations should be made to the Director of Information (AVI), General Services Administration, Washington, DC 20405.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 88 Stat. 1897; 5 U.S.C. 552a.)

Effective date. These regulations are effective September 29, 1976.

It is hereby certified that the impact does not meet the inflation impact criteria for major rules or regulations.

Dated: September 20, 1976.

JACK ECKERD,
Administrator.

[FR Doc.76–28475 Filed 9–28–76;8:45 am]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 1; Amdt. 1–120]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

National Highway Traffic Safety Administration

• *Purpose.* The purpose of this amendment is to add to the listing of general responsibilities of the National Highway Traffic Safety Administration the administration of the motor vehicle fuel economy program established by the Motor Vehicle Information and Cost Saving Act, as amended. •

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon are unnecessary and it may be made effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, § 1.4 (f) of Part 1 of Title 49, Code of Federal Regulations is amended by adding at the end thereof a new subparagraph (4) to read as follows:

§ 1.4 General responsibilities.

* * * * *

(f) *The National Highway Traffic Safety Administration.* Is responsible for—

* * * * *

(4) Administering a program of mandatory automotive fuel economy standards for passenger and non-passenger automobiles for model year 1978 and beyond.

* * * * *

Effective date: This amendment is effective September 29, 1976.

(Sec. 9(e), Department of Transportation Act, 49 U.S.C. 1657(e).)

Issued in Washington, D.C., on September 24, 1976.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

[FR Doc.76–28537 Filed 9–28–76;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. No. 1238, Amdt. 5]

PART 1033—CAR SERVICE

Certain Railroads Directed To Operate Portions of Lines Formerly Operated by Railroads in Bankruptcy

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 16th day of September 1976.

Upon further consideration of Service Order No. 1238 (41 FR 14520, 15848, 18850, 19223, 22819, and 31382), and good cause appearing therefor:

It is ordered, That: § 1033.1238 *Service Order No. 1238* (Certain Railroads Directed to operate portions of lines formerly operated by railroads in bankruptcy) be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) Expiration date: The provisions of this order shall expire at 12:01 a.m., December 11, 1976, or upon notification to the Commission of the entry of a rail service continuation payment operating agreement, whichever occurs first, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective 12:01 a.m., September 27, 1976.

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

(Interprets and applies Sec. 304 of Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 744); Pub. L. 92–236, 94–210)

By the Commission, Railroad Service Board, members Lewis R. Teeple, Thomas J. Byrne, and William J. Love.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76–28515 Filed 9–28–76;8:45 am]

proposed rules

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1308]

SCHEDULES OF CONTROLLED SUBSTANCES

Proposed Placement of Dextropropoxyphene in Schedule IV

On June 29, 1973, the Director of the Bureau of Narcotics and Dangerous Drugs (DNDD), predecessor agency to the Drug Enforcement Administration, requested of the Acting Commissioner of the Food and Drug Administration that a scientific and medical evaluation and recommendation that dextropropoxyphene be placed in Schedule IV of the Controlled Substances Act be made by the Secretary of Health, Education and Welfare and submitted to BNDD.

By a letter dated January 23, 1976, the Assistant Secretary for Health requested the Drug Enforcement Administration to compile and provide FDA with additional data concerning propoxyphene.

On March 2, 1976, DEA provided FDA with the additional data.

By a letter dated August 12, 1976, the Assistant Secretary for Health submitted the scientific and medical evaluation and recommendation requested by BNDD that propoxyphene be controlled in Schedule IV of the Controlled Substances Act. The Assistant Secretary's letter is set out as follows:

DEPARTMENT OF HEALTH,
EDUCATION AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., August 12, 1976.

Mr. PETER BENSINGER,
Administrator, Drug Enforcement Administration, 1405 "Eye" Street, NW., Washington, D.C.

DEAR MR. BENSINGER: The Bureau of Narcotics and Dangerous Drugs (BNDD) requested on June 29, 1973 that the Department of Health, Education and Welfare evaluate a proposal to control dextropropoxyphene in Schedule IV of the Controlled Substances Act (CSA).

The Food and Drug Administration has reviewed relevant data on dextropropoxyphene pursuant to Section 201 of the CSA and recommends that dextropropoxyphene (including all drug products containing dextropropoxyphene and its salts) be controlled in Schedule IV of the CSA. I concur with this scientific and medical evaluation.

A summary of the basis for this recommendation is enclosed.

I want to thank you and members of your staff for your cooperation in gathering the necessary data for the inherently difficult task of evaluating the issue of dextropropoxyphene control.

Appropriate staff members of the FDA will be available to assist the Drug Enforcement Administration in evaluating aspects of this recommendation and will make available any relevant information which you may need during the administrative procedures for drug control at DEA.

Sincerely yours,

J. F. DICKSON,
(For Theodore Cooper, M.D.,
Assistant Secretary for Health).

Enclosure.

The Drug Enforcement Administration has conducted a review of propoxyphene, which has included the following:

1. Published scientific and medical literature from the United States and other nations regarding this drug;

2. Information obtained from knowledgeable persons in the medical and scientific community;

3. Field surveys regarding propoxyphene conducted by the Drug Enforcement Administration;

4. Information obtained from the United States Public Health Service;

5. Information obtained from the National Institute for Drug Abuse poly-Drug Program;

6. Information obtained from poison control centers;

7. Selected investigatory files compiled for law enforcement purposes by the Drug Enforcement Administration;

8. Materials submitted to the Drug Enforcement Administration by the Department of Health, Education, and Welfare in support of the Assistant Secretary's August 12, 1976 letter requesting control for propoxyphene;

9. Materials on file with the Food and Drug Administration, and the Drug Enforcement Administration; and

10. The legislative history of the Controlled Substances Act.

Based upon the investigations and review of the Drug Enforcement Administration and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education, and Welfare, received pursuant to sections 201(a) and 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(a) and 811(b)), the Administrator of the Drug Enforcement Administration finds that:

1. Based on information now available, dextropropoxyphene has a low potential for abuse relative to the drugs or other substances currently listed in Schedule III.

2. Dextropropoxyphene has a currently accepted medical use in treatment in the United States.

3. Abuse of dextropropoxyphene may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Therefore, under the authority vested in the Attorney General by section 201 (a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(a)), and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, the Administrator proposes that § 1308.14 of Title 21 of the Code of Federal Regulations (CFR) be amended to read:

§ 1308.14 Schedule IV.

* * * * *

(e) *Other substances.* Unless specifically except or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, include its salts:

(1) Dextropropoxyphene (alpha-+-4-diethylamino - 1,2-diphenyl-3-methyl-2-propionoxybutane- - - - - - -

All interested persons are invited to submit their comments or objections in writing regarding this proposal. The comments or objections should state with particularity the issues concerning which the person desires to be heard. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Department of Justice, Room 1130, 1405 Eye Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received no later than December 1, 1976.

In the event that an interested party submits objections to this proposal which present reasonable grounds for this rule not to be finalized and requests a hearing in accordance with 21 CFR 1308.45, the party will be notified by registered mail that a hearing on these objections will be held as soon as the matter may be heard at the Drug Enforcement Administration, 1405 Eye Street, NW., Washington, D.C. 20537. If objections submitted do not present such reasonable grounds, the party will be so advised by registered mail.

If no objections presenting reasonable grounds for a hearing on the proposal are received within the time limitations, and all interested parties waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Administrator may, after giving consideration to written comments, issue his final order pursuant to 21 CFR 1308.48 without a hearing.

Dated: September 23, 1976.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc.76-28473 Filed 9-28-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[7 CFR Part 1804]

[FmHA Instruction 424.5]

PLANNING AND PERFORMING SITE DEVELOPMENT WORK

Proposed Assistance Eligibility Requirement

Notice is hereby given that the Farmers Home Administration has under consideration the proposed amendment of §1804.65 of Subpart D of Part 1804, Title 7, Chapter XVIII, Code of Federal Regulations. This amendment deletes the words "Wherever practicable" at the beginning of § 1804.65(c). The purpose of this amendment is to require that to be eligible for FmHA assistance, new and existing subdivisions must be a part of an established rural place, village, or town.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, DC 20250 on or before October 29, 1976.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Chief, Directives Management Branch during regular business hours. (8:15 a.m.–4:45 p.m.)

As proposed, § 1804.65(c) reads as follows:

§ 1804.65 Locations.

* * * * *

(c) Be a part of a rural place, village or town and take advantage of established facilities such as central water and sewerage systems, solid waste disposal, public and private transportation and police and fire protection.

* * * * *

(42 U.S.C. 1480, delegation of authority by the Sec. of Agri., 7 CFR 2.23, delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70)

Dated: September 21, 1976.

JOSEPH R. HANSON,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-28431 Filed 9-28-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19667]

BROADCAST LICENSEES

Maintenance of Certain Program Records Requirements; Order Extending Time for Filing Comments and Reply Comments

Adopted: September 16, 1976.
Released: September 21, 1976.

In the matter of petition for rulemaking to require broadcast licensees to maintain certain program records, Docket No. 19667.

1. On August 24, 1976, the Commission adopted a "Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking" in the above-entitled proceeding (41 FR 37344). The dates for filing comments and reply comments are presently October 7 and October 18, 1976, respectively.

2. On September 10, 1976, the National Association of Broadcasters (NAB) requested that the time for filing comments and reply comments be extended to and including November 8 and November 19, 1976, respectively. NAB states that in the instant proceeding radio and television licensees are invited to comment upon a proposal that would require each to retain and disclose transcripts, tapes or discs of all programming except entertainment and sports. Comments are also sought regarding making available machine production facilities for persons desiring to copy the public file, placing program logs in the public file and whether written comments and suggestions, covering station operations, received from members of the public should be placed in the public file and retained for three years. NAB states that it will need the additional time to compile information and to produce comments which will assist the Commission in this proceeding.

3. We are of the view that the public interest would be served by extending the time in this proceeding. Accordingly, it is ordered, That the dates for filing comments and reply comments are extended to and including November 8 and November 19, 1976, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-28449 Filed 9-28-76;8:45 am]

[47 CFR Part 83]

[Docket No. 20908; FCC 76-862]

TUNABLE SINGLE SIDE-BAND RECEIVER ABOARD VESSELS

Installation

Adopted: September 14, 1976.
Released: September 22, 1976.

In the matter of Amendment of Part 83, § 83.488(b)—to provide, effective January 1, 1977, for the installation of a tunable single sideband receiver, replacing the currently required double sideband receiver, aboard vessels fitted pursuant to Part II of Title III of the Communications Act or the radio provisions of the Safety Convention, Docket No. 20908.

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

2. Section 83.488(b) of Part 83 currently provides for the installation of a tunable receiver, capable of receiving double sideband emissions in the band 1605–3500 kHz, aboard vessels fitted with a radiotelephone station provided for compliance with Part II of Title III of the Communications Act of 1934, as amended, or the radio provisions of the Safety of Life at Sea Convention.

3. The purpose of this receiver is to permit reception of needed signals/communications on frequencies which cannot be tuned by the fixed-tuned receiver incorporated into the medium frequency transceiver used for radiotelephony communications.

4. In view of the established programs for the discontinuance of use of double sideband and for the use of single sideband radiotelephony on medium frequencies on and after January 1, 1977, it is necessary that the receiver required by § 83.488(b) be of a type which will satisfactorily receive single sideband emissions.

5. Accordingly, it is proposed that § 83.488(b), amended as set forth below, would be effective on and after January 1, 1977.

6. The proposed amendment to the rules, as set forth below, is issued pursuant to the authority contained in sections 4(i), 303(b)(g) and (r) and 356 of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before October 28, 1976, and reply comments on or before November 8, 1976. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to specific comments invited by this Notice.

8. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 11 copies of all statements, briefs, or comments filed shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 83.488(b) is revised to read as follows:

§ 83.488 Radiotelephone receivers.

(b) In addition to the receiver required by paragraph (a) of this section, a manually tuned receiver capable of effective reception of A3H, A3A and A3J emission on all frequencies within the band 1605–3500 kHz shall be provided.

* * * * *

[FR Doc.76-28450 Filed 9-28-76;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 569]

[No. 76-730]

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Extension of Time for Comments on Proposed Amendments Concerning Solicitation of Proxies

SEPTEMBER 23, 1976.

By its Document No. 76-589, dated August 18, 1976, the Federal Home Loan Bank Board proposed to amend Part 569 of the rules and regulations for Insurance of Accounts (12 CFR Part 569) for the purpose of enhancing the ability of persons with voting rights in insured institutions to exercise those rights meaningfully in situations where management has engaged in the types of transactions which must be disclosed in an annual report under new § 563.45 of said regulations (41 FR 35823) or elects not to follow the Board's new guidelines (41 FR 35821) respecting composition of the institution's board of directors. Notice of such proposed rulemaking was published in the FEDERAL REGISTER on August 24, 1976 (41 FR 35827), and interested persons were invited to submit written data, views, and arguments to the Board by October 8, 1976.

The Board has received requests to extend the comment period on this proposal in order to provide an opportunity to study this matter in depth prior to submission of comments. In view of the importance of the proposal, and in light of the foregoing requests, the Board has decided to extend the time for submission of comments on such proposal until November 1, 1976.

(Sec. 407, 48 Stat. 1260, as amended; 12 U.S.C. 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48. Comp., p. 1071)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.76-28488 Filed 9-28-76;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 531]

[Docket No. 76-40]

FILING OF FREIGHT AND PASSENGER RATES, FARES AND CHARGES IN THE DOMESTIC OFFSHORE TRADE, PUBLICATION AND POSTING

Enlargement of Time To File Comments

Notice of proposed rulemaking was published in this proceeding August 6, 1976 (41 FR 32899). Upon request of interested parties good cause is shown to exist for a certain enlargement of time. Accordingly, time within which comments may be filed in response to the notice of proposed rulemaking is enlarged to and including November 1, 1976. Hearing Counsel shall file a reply to comments on or before December 1, 1976. Answers to Hearing Counsel shall be filed on or before December 24, 1976.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-28498 Filed 9-28-76;8:45 am]

NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

[1 CFR Parts 440, 441]

FREEDOM OF INFORMATION

Organization and Public Access to Records

The National Commission on Electronic Fund Transfers ("Commission") proposes to amend Chapter IV of Title I of the Code of Federal Regulations by adding a new Part 440 and a new Part 441. These regulations are proposed under the authority of the Freedom of Information Act, 5 U.S.C. 552, and are intended to implement that statute by providing in Part 440 a general description of the organization of the Commission and in Part 441 a set of procedures for public access to Commission records.

Because the Commission's functions—to investigate the issues related to the possible development of public or private electronic fund transfer systems and to make appropriate recommendations to Congress and the President—involve neither regulation nor adjudication, the Commission has determined that it is unlikely to generate the types of materials for which subsection (a)(2) of the Freedom of Information Act requires the publication of an index on a quarterly or more frequent basis. Accordingly, these proposed regulations reflect the Commission's decision to dispense with the publication of such an index.

Public disclosure of documents to the fullest extent consonant with the proper discharge of the functions of government is the policy of the Commission. Therefore, these proposed regulations authorize the Commission's Freedom of Information Officer to make available whenever practicable, requested records even if their nondisclosure could be justified under one of the nine exemptions set out in the Freedom of Information Act and in these regulations.

On the other hand, these proposed regulations also provide procedures by which a federal agency or other entity may request that records which are submitted to the Commission and which are subject to one or more statutory exemptions from disclosure be accorded confidential treatment.

Other provisions of these proposed regulations provide general procedures for requesting records and obtaining administrative and judicial review of Commission decisions. The final three sections set forth the Commission's fee schedule for search and duplication of records and authorize the Freedom of Information Officer to request advance deposits when it is estimated that fees will exceed $25.00.

The Commission proposes to make these amendments to the Code of Federal Regulations effective as soon as the Commission has had an opportunity to review any timely comments. Inquiries, data, views and arguments may be submitted to the Deputy General Counsel of the National Commission Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Suite 900, Washington, D.C. 20036. All material received on or before October 24, 1976, will be considered. All comments in rseponse to this proposal will be available for public inspection during normal business hours at the offices of the Commission.

In consideration of the foregoing, the Commission proposes to amend Chapter IV of Title I of the Code of Federal Regulations as follows:

PART 440—ORGANIZATION

Part 440 is added as follows:

Sec.
440.1 Purpose.
440.2 Status.
440.3 Membership.
440.4 Staff.
440.5 Offices.
440.6 Functions of the Commission.
440.7 Divisions.

AUTHORITY: 5 U.S.C. 552.

§ 440.1 Purpose.

This part is intended to provide a general description of the organization of the National Commission on Electronic Fund Transfers ("Commission"), in compliance with the Freedom of Information Act, 5 U.S.C. 552(a)(1). More detailed information can be obtained from the Public Affairs Officer, National Commission on Electronic Fund Transfers, Suite 900, 1000 Connecticut Avenue, NW., Washington, D.C. 20036.

§ 440.2 Status.

Pursuant to Pub. L. 93-495, Title II, secton 201 et seq., as amended by Pub. L. 94-200, Title II, section 201, the Commission was established as an independent instrumentality of the United States.

§ 440.3 Membership.

The Commission is composed of twenty-six Commissioners, all of whom are appointed by the President. By statute, twelve of the Commissioners are heads of federal agencies or their delegates; two are state officials; seven represent financial institutions or business entities; and five are from private life with no substantial interest in any financial institution. One Commissioner is designated Chairperson by the President.

§ 440.4 Staff.

The staff of the Commission is headed by an Executive Director, whose appointment is confirmed by the Senate.

§ 440.5 Offices.

The offices of the Commission are located at Suite 900, 1000 Connecticut Avenue, NW., Washington, D.C. 20036.

§ 440.6 Functions of the Commission.

The functions of the Commission are to conduct a thorough study and investigation and recommend appropriate administrative action and legislation necessary in connection with the possible development of public or private electronic fund transfer systems. In pursuit of its functions the Commission is authorized to hold hearings and to obtain from federal agencies such data, reports and other information as the Commission deems necessary. The Commission is required to make a final report of its findings and recommendations, and at least one interim report. The reports are to be made available to the public upon their transmittal to the President and the Congress.

§ 440.7 Divisions.

To implement the above functions the Commission staff is organized according to the following divisions:

(a) *Office of the Executive Director.* This office, headed by the Executive Director, provides general policy and guidance to the Commission staff and is responsible for general administrative matters. In addition to the Executive Director, this office includes the Deputy Executive Director, the Administrative Officer, and the Public Affairs Officer. The responsibilities of the Public Affairs Officer include Congressional liaison, inquiries from the news media, and inquiries from the public (including requests under the Freedom of Information Act, as set forth in Part 441 of this Chapter).

(b) *Office of Research.* This office is headed by the Research Director and consists of a small staff of Senior Research Specialists and their Assistants. The office has primary responsibility for the substantive research conducted for the Commission.

(c) *Office of the General Counsel.* This office consists of the General Counsel and a small legal staff. It provides the Commission with legal advice and representation.

PART 441—PUBLIC ACCESS TO RECORDS

Part 441 is added as follows:

Subpart A—General; Confidentiality

Subpart B—Requests for Access to Records

Subpart C—Appeals

Subpart D—Preservation of Records and Reports; Access to Records; Fees

AUTHORITY: 5 U.S.C. 552.

Subpart A—General; Confidentiality

§ 441.1 Purpose.

This part contains the regulations of the Commission implementing the record disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552. These regulations set out the procedures for obtaining records from the Commission, the guidelines for determining which records are not subject to compulsory disclosure under the Act, and the method by which a government agency or other entity may request that a record with which it has furnished the Commission be withheld from routine disclosure in response to a Freedom of Information Act request.

§ 441.2 Waiver.

Whenever a waiver of any of the procedures set forth in this part would further the purposes of the Freedom of Information Act by facilitating the public disclosure of nonconfidential records within the time period required by that Act, the Freedom of Information Officer or the Executive Director may, in the context of specific requests for records, waive any of the procedural requirements of this part.

§ 441.3 Availability of "(a)(2)" materials.

The Commission shall make available at its offices, for public inspection and copying, any material of the type described in 5 U.S.C. 552(a)(2). Because the Commission anticipates that it will generate very little, if any, material of the type required to be indexed by 5 U.S.C. 552(a)(2), the Commission has, therefore, determined that the quarterly publication of an index would be both unnecessary and impracticable. The Commission shall maintain at its offices a current index, copies of which shall be available, free of charge, upon request.

§ 441.4 Requests for confidential treatment.

(a) *Government agencies.* Any agency of the United States government which is concerned in regard to the confidentiality of any record it submits to the Commission may so inform the Commission in writing, and request that that agency be consulted upon receipt of any Freedom of Information Act request involving such record. Agency requests under this section should specify the person or office to be consulted.

(b) *Others.* Any entity other than an agency of the United States which is concerned in regard to the confidentiality of any record it submits to the Commission may so inform the Commission in writing and request that such record be accorded confidential treatment by the Commission.

(c) *Time and method.* Written requests pursuant to paragraph (a) or (b) of this section should accompany the records for which confidential treatment is requested; and, where applicable, the specific portions of a record for which confidential treatment is requested should be identified. To the extent possible, records for which confidential treatment is requested shall be separately bound or otherwise segregated from any accompanying material.

§ 441.5 Records which may be accorded confidential treatment.

The kinds of records described below are exempt from all mandatory public availability requirements of 5 U.S.C. 552. Records which are subject to one or more of the following exemptions may be accorded confidential treatment by the Commission pursuant to a request made as set forth in § 441.4:

(a) Records that are (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and (2) are in fact properly classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of the Commission;

(c) Records specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and Geophysical information and data, including maps, concerning wells.

Subpart B—Requests for Access to Records

§ 441.6 Written requests.

(a) A request pursuant to the Freedom of Information Act for records held by the Commission must be submitted in writing and be clearly marked "FREEDOM OF INFORMATION REQUEST" both upon the letter and the envelope. All such requests shall be addressed to the Freedom of Information Officer, National Commission on Electronic Fund Transfers, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. Any request for information pursuant to said Act which is not marked and addressed as specified in this paragraph will be so marked by Commission personnel as soon as it is properly identified, and it will be forwarded immediately to the Freedom of Information Officer.

(b) A request should sufficiently identify the records requested to enable Commission personnel to locate them with a reasonable amount of effort. To the extent possible, specific information which may help identify the records should be supplied by the requester. If it is determined that a request does not reasonably describe the records sought, the response denying the request on that ground shall specify the ways in which the request was insufficiently descriptive and shall extend to the requester an opportunity to confer with Commission personnel in order to attempt to reformulate the request so that the records desired can be located with a reasonable amount of effort.

(c) A request should also state that the requester agrees to pay all fees, based on the fee schedule set forth in Subpart D, for search and duplication related to the request. If there is a limit on the fee that the requester is willing to incur, the request should state the limit.

(d) A request shall be deemed to have been received by the Commission for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) when the request, bearing the mark required by § 441.6(a) is received by the Freedom of Information Officer, who shall promptly stamp the date of receipt on the face of the request and send the requester notice of the date of receipt.

(e) Whenever a request shall be made for the disclosure of records, the confidentiality of which has been requested pursuant to § 441.4, the party who submitted such records shall be notified that their disclosure has been requested.

§ 441.7 Records obtained from other sources.

(a) *Determination of source of requested records.* The Freedom of Information Officer, promptly upon receipt of a request for records, shall determine whether or not the Commission obtained any of the requested records from a source outside the Commission.

(b) *Records obtained from an agency of the United States.* Upon receipt of a request for a record which the Commission has obtained from an agency of the United States, the Freedom of Information Officer shall promptly consult that agency regarding the grant or denial of the request: *Provided,* That that agency has previousely informed the Commission, in accordance with § 441.4, of its concern for the confidentiality of that record.

(c) *Records obtained from sources other than agencies of the United States.* A request for a record which the Commission has obtained from a source other than an agency of the United States shall be denied if (1) that source has previously informed the Commission, in accordance with § 441.4, of its concern for the confidentiality of that record, and (2) the record is covered by one or more of the exemptions set forth in § 441.5.

(d) *Records for which the Commission has received no confidentiality request.* Nothing in these regulations shall prevent the Commission from independently deciding to consult with an agency of the United States regarding a request for information, or from independently deciding to withhold any record which is covered by one or more of the exemptions set forth in § 441.5.

§ 441.8 Initial decision.

(a) Within ten "business days" (i.e., excluding Saturdays, Sundays and legal, public holidays) of the receipt by the Commission of a request for records, the Freedom of Information Officer, after consulting with the General Counsel, shall determine whether to grant or deny, in whole or in part, that request. In making the initial decison, the Freedom of Information Officer shall bear in mind that public disclosure to the fullest extent consonant with the proper discharge of the functions of government is the policy of the United States, as expressed in 5 U.S.C. 552, and the policy of the Commission. The Freedom of Information Officer is, therefore, authorized to make available any records as to which the Commisson has received no request for confidential treatment and the disclosure of which would not impede the discharge of the Commisison's functions, notwithstanding the applicability or possible applicability of an exemption from disclosure. In making the initial decision the Freedom of Information Officer shall consider, among other alternatives, the possiblity of separating confidential records, as defined in Subpart A of this part, from other portions of any requested records, and disclosing the nonconfidential portions.

(b) In the event of an unusual circumstance, as defined in paragraph (b)(1), (2) or (3) of this section, the Freedom of Information Officer may extend, by no more than ten (10) working days, the time within which he must make an initial decision in response to a written request. The Freedom of Information Officer shall immediately give written notice to the party making the request of any such extension of time, of the reasons for such an extension, and of the expected date of the initial decision. "Unusual circumstances," for this purpose, shall include:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Commission's office in Washington, D.C.

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request for records or among two or more components of the Commission having substantial subject matter interest therein.

§ 441.9 Notice of initial decision.

(a) *Request granted.* When the initial decision is to grant a request for records, or a portion thereof, the Freedom of Information Officer shall immediately send the requester written notice which shall include: (1) A statement of that decision, (2) a brief description of the records to be made available, (3) a statement of the time and place where such records will be made available for inspection, or (4) in the alternative, if the requester has requested copies, the procedure for duplication and delivery (by mail or other means) of the records to the requesting party, and (5) an itemized statement of any applicable fees pursuant to § 441.16.

(b) *Request denied.* When the initial decision is to deny a request for records, or a portion thereof, the Freedom of Information Officer shall immediately send the requester written notice which shall include: (1) A brief statement of that decision and the reasons therefor, (2) an identification of the name and title of the person responsible for that decision, (3) a reference to the specific exemption or exemptions in the Freedom of Information Act under which the denial is authorized, and (4) a description of the procedures, pursuant to Subpart C, for an appeal from that decision.

(c) *No decision.* If the Freedom of Information Officer is unable to dispatch an initial decision to the requester within the time period or extended time period as provided in § 441.8, the Freedom of Information Officer shall inform the requester of (1) the reason for the delay, (2) the date on which an initial decision is expected, (3) the requester's right to an immediate appeal to the Executive Director, and (4) the procedures for such an appeal. The Freedom of Information Officer may ask the requester to forego any appeal until an initial decision has been reached; but, in any event, the Freedom of Information Officer shall continue to process the request until an initial decision has been reached and communicated to the requester.

Subpart C—Appeals

§ 441.10 Written appeal.

(a) Any person who has made a written request for the disclosure of records pursuant to Subpart B of this part may, within thirty days of receipt of a written notice of the Freedom of Information Officer's initial decision or after the Freedom of Information Officer's failure to take any timely action upon that re-

quest, request that the Executive Director of the Commission review that decision or nonaction. Any such request for review must be made in writing and contain the words "FREEDOM OF INFORMATION APPEAL" both on the envelope and the letter. Such appeals should be addressed to the Freedom of Information Officer, National Commission on Electronic Fund Transfers, Suite, 900, 1000 Connecticut Avenue, NW., Washington, D.C. 20036. An appeal which is improperly marked or addressed will be properly marked by Commission personnel and sent to the Freedom of Information Officer as soon as it is properly identified. An appeal improperly marked or addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(ii) until the appeal has been properly marked and is received by the Freedom of Information Officer, who shall promptly stamp the date of receipt on the face of each appeal and notify the requester of the date of receipt.

(b) Any written request for review of an initial decision shall include a copy of the party's initial request to the Freedom of Information Officer for the disclosure of records, a copy of the Freedom of Information Officer's initial decision, and a brief statement of the legal, factual or other basis for the party's objection to that initial decision.

§ 441.11 Additional information.

Immediately upon receipt of a written appeal, the Executive Director may request that additional information be submitted by the party appealing or by the Freedom of Information Officer.

§ 441.12 Appellate decision.

(a) The Executive Director shall, within twenty (20) business days of the receipt of any written appeal, determine whether to grant or deny that appeal.

(b) In the event of an unusual circumstance, as defined in § 441.8(b), the Executive Director may extend by no more than ten (10) business days, the time within which he must make an appellate decision in response to a written appeal. The Executive Director shall immediately give written notice to the party making the request of any such extension of time, of the reasons for such an extension and of the expected date of the appellate decision.

§ 441.13 Notice of appellate decision.

The Executive Director shall, immediately upon making an appellate decision, given written notice of that decision to the person making the request. In the event the appeal is granted, in whole or in part, the notice shall include the information set forth in § 441.9(a) (1) through (5). In the event the appeal is denied, in whole or in part, the notice shall include the information set forth in § 441.9(b) (1) through (3), as well as a statement of the provisions for judicial review of the appellate decision pursuant to 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the Executive Director will nevertheless continue to process the appeal. On expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected, and of his right to seek immediate judicial review in the United States District Court. The requester may be asked to forego judicial review until determination of the appeal.

Subpart D—Preservation of Records and Reports; Access to Records; Fees

§ 441.14 Preservation of records and reports to Congress.

The Freedom of Information Officer shall preserve and maintain, during the existence of the Commission, each request for records under the Freedom of Information Act; originals or copies of all notices, appeals and correspondence related thereto; and copies of each report submitted to Congress by the Commission pursuant to 5 U.S.C. 552(d).

§ 441.15 Access.

(a) Except as set forth in paragraph (b) of this section or as otherwise determined by the Freedom of Information Officer or the Executive Director, requested records or duplicate copies thereof to be made available to any person shall be made available during regular business hours at the offices of the National Commission on Electronic Fund Transfers at 1000 Connecticut Avenue N.W., Washington, D.C.

(b) Upon the approval of the Freedom of Information Officer or the Executive Director, requested records or duplicate copies thereof, can be made available by mail to the person making the request.

§ 441.16 Fees.

(a) Fees charged by the Commission for the search for and duplication of any records requested shall be governed by the following fee schedule:

(1) *Search for records.* $6.00 per hour when the search is conducted by a clerical employee. $13.00 per hour when the search is conducted by a professional employee.

(2) *Duplication of records.* Records will be duplicated at a charge of $.10 per page.

(3) *Other.* When no specific fee has been established for a service, the Freedom of Information Officer is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act. Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communication costs; or duplication of oversize documents.

(4) *Payment due.* Search costs may be assessed even if the record which was requested cannot be located after all reasonable efforts have been made or if it is determined that a requested record is confidential and should be withheld.

(b) The Freedom of Information Officer or the Executive Director may determine, in connection with particular requests for records that the public interest is best served by the provision of the requested records at no cost or at a cost below the above schedule, and, in those specific instances, may waive or reduce the above schedule.

§ 441.17 Prior authorization or advance deposit of fees.

(a) Where it is anticipated that the search or duplication fees will exceed the limit stated by the requester pursuant to § 441.6(c), or where the requester has neither agreed to pay all fees nor stated a limit, the requester shall be notified of the estimated fees and his approval for such fees requested. Such person shall also be offered the opportunity to reformulate his or her request in order to reduce the search, duplication and other fees but yet satisfy that person's need for records.

(b) Where the estimated search or duplication fees exceed $25.00, the Freedom of Information Officer may in addition request that the person requesting records make an advance deposit of the estimated fees.

(c) The dispatch of a request for an estimated fee approval or advance deposit shall suspend, until a reply is received by the Commission, the period, pursuant to 5 U.S.C. 552 and § 441.8 hereof, within which the Freedom of Information Officer must respond to a written request for records.

§ 441.18 Payment of fees.

(a) Fees actually charged a person for search and duplication of records must be paid in full prior to issuance of those records. In the event that a person is in arrears for previous requests to the Commission for records, records will not be provided for any subsequent requests until the arrears have been paid in full.

(b) Payment of fees shall be made by personal check, postal money order or bank draft drawn on a bank in the United States, made payable to the order of the Treasurer of the United States.

(5 U.S.C. 552)

Dated: September 24, 1976.

WILLIAM B. WIDNALL,
Chairman, National Commission on Electronic Fund Transfers.

[FR Doc.76-28540 Filed 9-24-76;4:55 pm]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 120]

BUSINESS LOAN POLICY

Eligible Participants

The Small Business Administration (SBA) is proposing to amend its Business Loan Policy Regulations concerning the operations of Subsection (b) Lenders established under § 120.4 (b) of the regulations to:

1. Provide for a processing fee for applications;

2. Require public notice of applications to become Subsection (b) Lenders;

3. Reduce the amount of loans that can be made based on the capital and surplus;

4. Prohibit financing to the same small business by a Subsection (b) Lender and an affiliated Small Business Investment Company;

5. Provide for a limitation on borrowing of funds to purchase stock in a Subsection (b) Lender;

6. Add certain other provisions.

Prior to the adoption of such amendments, consideration will be given to any comments which are submitted in writing to the Associate Administrator of Finance and Investment SBA, 1441 L Street, N.W., Washington, D.C. 20416, on or before October 29, 1976.

Pursuant to the authority of section 5 of the Small Business Act, 72 Stat. 385 15 U.S.C. 634, and section 7 of such Act, as amended, 72 Stat. 387 15 U.S.C. 636, it is proposed to amend Part 120 in the manner set forth below:

1. Section 120.4(c) (1) and (2) would be revised as follows:

§ 120.4 Eligible loan participants.

* * * * *

(c) *Determination of eligibility*—(1) *Application by prospective Subsection (a) Lenders.* A lending institution wishing to participate with SBA in making loans to small business concerns and meeting all requirements set forth in paragraph (a) of this section should submit its request to the SBA District Office serving the area in which the lending institution intends to participate with SBA in making loans to small business concerns. The District Office may require further evidence of the lending institution's qualifications.

(2) *Application by prospective Subsection (b) Lenders.* A lending institution wishing to participate with SBA as a Subsection (b) Lender shall submit its application for determination of its qualifications on SBA Form 1080, accompanied by a non-refundable processing fee of $500, to the Associate Administrator for Finance and Investment, Washington, D.C. 20416. SBA will publish in the FEDERAL REGISTER a notice of each application and will provide an opportunity for submission of written comments. The applicant, upon request of SBA, shall publish a similar notice in a newspaper of general circulation in the city or other proposed area of operation.

2. Section 120.5(b) (10) through (14) would be revised as follows:

§ 120.5 Operations of eligible participants.

* * * * *

(b) *Special requirements applicable to Subsection (b) Lenders.* * * *

(10) *Services to borrowers.* Where a Subsection (b) Lender or any of its associates provides services permitted under § 120.5(a)(2), such services shall be furnished pursuant to a written contract approved by the board of directors, partners, or proprietor of the small business concern. Records of time spent and charges made for such service shall be maintained for examination by SBA. Charges made shall not exceed those charged by established professional consultants providing similar services.

(11) *Common control.* Without prior written SBA approval, a Sub-section (b) Lender shall not have any officer, director, or holder of ten percent or more of its voting securities who is an officer, director, or holder of ten percent or more of the voting securities either of another Subsection (b) Lender, or of any entity which directly or indirectly controls or is under common control with another Subsection (b) Lender.

(12) *Management and services.* A Subsection (b) Lender may employ a manager or adviser, or may contract for managerial or advisory services, subject to prior written approval of SBA and subject to the supervision of the Lender's Board of directors. The contract shall specify the services to be rendered to the Subsection (b) Lender and to its applicants and borrowers.

(13) *Prohibited financing.* A subsection (b) Lender may not make a loan to a small business concern which has received financing (or commitment therefor) from a small business investment company licensed by SBA which is an "associate", as defined by § 120.1(d)(2), of the Subsection (b) Lender.

(14) *Borrowed funds.* Shareholders owning ten or more percent of any class of the stock of the Subsection (b) Lender may not use borrowed funds in purchasing such stock unless the net worth of such shareholders is at least twice the amount borrowed or unless such shareholders receive SBA's prior written approval of a lesser ratio on the basis that it is adequate in the light of all circumstances.

3. Section 120.6(d)(2)(v) is revised to add the following:

§ 120.6 Reports to SBA by Subsection (b) Lenders.

* * * * *

(d) *Other reports to SBA.* * * *

(2) *Reports of changes.* * * *

(v) Whenever ten percent or more of the Subsection (b) Lender's stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior written approval of SBA is required under § 120.5(b)(9), written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty days following the date of the transaction.

§ 120.7 [Amended]

4. In § 120.7, *Examination of Subsection (b) Lenders*, editorial changes are made so that the rate table reads as follows:

Total assets:	*Base rate and percent of assets*
$500,000 or less	$400 plus 0
$500,001 to $1,000,000	$400 plus 0.06 over $500,000
$1,000,001 to $3,000,000	$700 plus 0.015 over $1,000,000
$3,000,001 to $5,000,000	$1,000 plus 0.008 over $3,000,000
Over $5,000,000	$1,160 plus 0.003 over $5,000,000

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: September 16, 1976.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.76-28426 Filed 9-28-76;8:45 am]

notices

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

DEPARTMENT OF DEFENSE

Department of the Air Force

PRIVACY ACT OF 1974

Proposed System of Records Amendment

In FR Doc. 75-21075 published in the FEDERAL REGISTER (40 FR 35403) of August 18, 1975 and FR Doc. 75-26296 (41 FR 2954) of January 20, 1976 the Department of the Air Force set forth agency systems of records as prescribed by the Privacy Act of 1974.

Notice is hereby given that the Department of the Air Force has submitted a proposed amendment to a system of records pursuant to the provisions of Office of Management and Budget (OMB) Circular No. A-108, Transmittal Memorandum No. 1, dated September 30, 1975 which requires submission of a report of Federal agency intention to establish or alter systems of records, as required by the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a(o)). This OMB guidance was set forth in the FEDERAL REGISTER (40 FR 45877) on October 3, 1975.

Following the brief identification of the record system and the specific changes made therein, the complete revised record system, as amended, is published in its entirety. Any public comments, including written data, views or arguments concerning the changes should be addressed to the system manager identified in the record system notice on or before October 29, 1976.

F03505 DPMAO B

System name: 03505 DPMAO B Personnel Action File (Digest File) (41 FR 3009).

CHANGES

System location: After the ZIP code delete the period and add "for active duty officers and Air Reserve Personnel Center, 3800 York St., Denver CO 80205 for nonactive duty USAFR officers."

Categories of individuals covered by the system: At the end of the sentence add "and nonactive duty USAFR officers."

Categories of records in the system: Delete entire entry and substitute "Composed largely of summaries/extracts or notices of the Air Force Office of Special Investigations (AFOSI) Reports of Investigation (ROIs). The system may also contain other official records or documents which reflect relevant derogatory information about officers, e.g., notice of involuntary separation proceedings, notice of Special Security File, reports of AWOL/Desertion status, administrative inquiries and investigations, Inspector General (IG) reports, and reports of violations of public trust in contract, procurement, and other matters. Additionally, a file will contain a statement regarding the subject matter from the the officer if one is made, plus any comments and recommendations by the member's commander. Finally, a Digest File will contain copies of documentation used to notify the individual and the commander of the file and a record of the Officer Personnel Records Review Board (OPRRB) decision to retain the file. The system of records also includes letters of notification when digest files are destroyed."

Authority for maintenance of the system: Delete entire entry and substitute "10 U.S.C. 8012."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Delete entire entry and substitute "Digest Files are reviewed by career management officials and Central Selection Boards at AFMPC or ARPC, as appropriate, to insure the propriety of personnel decisions finalized at those levels regarding promotion, assignment, mobilization, recall to extended active duty, selection, utilization and separation. The purpose of such review is to insure that individual career management decisions enhance the quality of professionalism in the Air Force."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retrievability: Change to read "Filed alphabetically by name."

Safeguards: Delete entire entry and substitute "Records are accessed by persons responsible for servicing the record system in the performance of their official duties and by other personnel whose names appear on an authorized access list indicating they have a need to know in the performance of their official duties. Records are stored in locked cabinets."

Retention and disposal: Delete entire entry and substitute "Disposition is pending approval under 44 U.S.C. 3303(3)."

System manager(s) and address: Delete entire entry and substitute "Chief, Special Control and Records Review Group (AFMPC/DPMAO), Randolph AFB TX 78148 for active duty officers and Chief, Special Actions Branch (ARPC/DPAAS), 3800 York Street, Denver CO 80205 for non-active duty USAFR officers."

Notification procedures: Add "Written requests should contain the member's full name, rank, and SSAN. Information may also be obtained by personal visit with the appropriate Systems Manager upon verification of the identification data required for written requests."

Record access procedures: Delete entire entry and substitute "Individuals can obtain access to their own Digest Files by following the procedures described above."

Record source categories: Delete entire entry and substitute "Digest File information is obtained from AFOSI, Commanders, Consolidated Base Personnel Offices, FBI, MAJCOMs, HQ USAF/IG and from official records, reports or documents prepared on behalf of the Air Force by boards, committees, panels, and investigating officers."

System exempted from certain provisions of the act: Delete entire entry and substitute "None."

F03505 DPMAO B

System name: 03505 DPMAO B Personnel Action File (Digest File).

System location: At Air Force Military Personnel Center, Randolph Air Force Base, TX 78148 for active duty officers and Air Reserve Personnel Center, 3800 York St., Denver CO 80205 for nonactive duty USAFR officers.

Categories of individuals covered by the system: Air Force active duty officer personnel and nonactive duty USAFR officers.

Categories of records in the system: Composed largely of summaries/extracts or notices of the Air Force Office of Special Investigations (AFOSI) Reports of Investigation (ROIs). The system may also contain other official records or documents which reflect relevant derogatory information about officers, e.g., notice of involuntary separation proceedings, notice of Special Security File, reports of AWOL/Desertion status, administrative inquiries and investigations, Inspector General (IG) reports, and reports of violations of public trust in contract, procurement, and other matters. Additionally, a file will contain a statement regarding the subject matter from the officer if one is made, plus any comments and recommendations by the member's commander. Finally, a Digest File will contain copies of documentation used to notify the individual and the commander of the file and a record of the Officer Personnel Records Review Board (OPRRB) decision to retain the file. The system of records also includes letters of notification when digest files are destroyed.

Authority for maintenance of the system: 10 U.S.C. 8012.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Digest Files are reviewed by career management officials and Central Selection Boards at AFMPC or ARPC, as appropriate, to insure the propriety of personnel decisions finalized at those levels regarding promotion, assignment, mobilization, recall to extended active duty, selection, utilization and separation. The purpose of such review is to insure that individual career management decisions enhance the quality of professionalism in the Air Force.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained in visible file binders/cabinets.

Retrievability: Filed alphabetically by name.

Safeguards: Records are accessed by persons responsible for servicing the record system in the performance of their official duties and by other personnel whose names appear on an authorized access list indicating they have a need to know in the performance of their official duties. Records are stored in locked cabinets.

Retention and disposal: Disposition is pending approval under 44 U.S.C. 3303(3).

System manager(s) and address: Chief, Special Control and Records Review Group (AFMPC/DPMAO), Randolph AFB TX 78148 for active duty officers and Chief, Special Actions Branch (ARPC/DPAAS), 3800 York Street, Denver CO 80205 for non-active duty USAFR officers.

Notification procedures: Requests from individuals should be addressed to the Systems Manager. Written requests should contain the member's full name, rank, and SSAN.

Information may also be obtained by personal visit with the appropriate Systems Manager upon verification of the identification data required for written requests.

Record access procedures: Individuals can obtain access to their own Digest Files by following the procedures described above.

Contesting record procedures: The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories: Digest File information is obtained from AFOSI, Commanders, Consolidated Base Personnel Offices, FBI, MAJCOMs, HQ USAF/IG and from official records, reports or documents prepared on behalf of the Air Force by boards, committees, panels, and investigating officers.

System exempted from certain provisions of the act: None.

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

SEPTEMBER 24, 1976.

[FR Doc.76-28474 Filed 9-28-76;8:45 am]

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, NY 10014, on 15 October 1976.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. This special device area includes such programs as Infrared and Night Vision Sensors. The review will include classified program details throughout.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: September 24, 1976.

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

[FR Doc.76-28489 Filed 9-28-76;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES V. NORTHWEST COLLISION CONSULTANTS

United States Withdraws Consent to Proposed Final Judgment

Notice is hereby given of the withdrawal on September 10, 1976 by the Department of Justice of its consent to the proposed final judgment which would have terminated the civil case filed on December 3, 1975. The suit alleged that Northwest had conspired to fix prices, discounts, and retail rates in the auto body repair business in violation of Section 1 of the Sherman Act.

The proposed judgment, which was filed on July 2, 1976, was awaiting entry by the court pending the period for public comment required by the Antitrust Procedures and Penalties Act of 1974, and would have become final on September 16, 1976. The proposed Judgment and Competitive Impact Statement may be found in Vol. 41, p. 28550 of the FEDERAL REGISTER.

The Department withdrew its consent to the proposed judgment in order to allow time to permit the resolution of a point of apparent disagreement between the Department and Northwest concerning the interpretation of certain of the injunctive provisions of the proposed judgment.

Under the terms of such settlements, the United States can withdraw its consent to a proposed final judgment at any time prior to its entry by the court.

Dated: September 21, 1976.

HUGH P. MORRISON, Jr.,
Acting Assistant Attorney General, Antitrust Division.

[FR Doc.76-28390 Filed 9-28-76;8:45 am]

Drug Enforcement Administration

CONTROLLED SUBSTANCES

Proposed Aggregate Production Quotas for 1977

Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each such substance for (1) The estimated medical, scientific, research, and industrial needs of the United States, (2) lawful export requirements, and (3) the establishment and maintenance of reserve stocks.

In establishing the below listed proposed 1977 aggregate production quotas, the Administrator considered pursuant to Section 302 subsection (a) of the Public Health Services Act (42 U.S.C. 242 (a)) the "Results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States" which were supplied by the Department of Health, Education, and Welfare. In addition, the proposed aggregate quotas were established considering the following factors:

(1) Total actual 1975 and estimated 1976 and 1977 net disposals of each substance by all manufacturers.

(2) Projected trends in the national rate of net disposals of each substance.

(3) Estimates of inventories of each substance and of any substance manufactured from it, and trends in accumulation of such inventories.

(4) Projected demand as indicated by procurement quota applications which were filed pursuant to § 1303.12 of Title 21 of the Code of Federal Regulations.

Pursuant to Title 21 Code of Federal Regulations, § 1303.23(c), the Administrator of the Drug Enforcement Administration will in early 1977 adjust individual manufacturing quotas allocated for 1977 based upon 1976 end of year inventory figures and actual 1976 disposition figures of each basic class of Schedule I and II controlled substances which will be provided by quota applicants.

Based upon consideration of the above factors, the Administrator of the Drug Enforcement Administration hereby proposes that aggregate production quotas for 1977 for the following controlled substances, expressed in grams in terms of their respective anhydrous base, be established as follows:

Basic class:	*Proposed 1977 quota*
Schedule I	
2-5 dimethoxyamphetamine	42,000,000
Lysergic acid diethylamide	1
Mescaline	200
Schedule II	
Alphaprodine	45,000
Amobarbital	13,142,000
Amphetamine	Reserved
Anileridine	270,000
Cocaine	1,249,000
Codeine (for sale)	49,918,000
Codeine (for conversion)	1,343,000
Desoxyephedrine (1,490,000 g for the production of levo-desoxyephedrine for use in a noncontrolled, nonprescription product, and 393,000 g for the production of methamphetamine)	1,883,000
Dihydrocodeine	602,000
Diphenoxylate	1,272,000
Ethylmorphine	21,000
Fentanyl	2,000
Hydrocodone	711,000
Hydromorphone	78,000
Levorphanol	6,000
Methadone	2,432,000
Methadone intermediate (4-cyano-2 dimethyl-amino-4,4-diphenyl butane)	2,153,000
Methaqualone	17,914,000
Methylphenidate	1,798,000
Mixed alkaloids of opium	49,000
Morphine (for sale)	489,000
Morphine (for conversion)	46,597,000
Opium (tinctures, extracts, etc.) (expressed in terms of powdered opium)	2,655,000
Oxycodone (for sale)	1,669,000
Oxycodone (for conversion)	5,400
Oxymorphone	3,500
Pentobarbital	19,144,000
Pethidine	12,428,000
Phenmetrazine	2,126,000
Secobarbital	17,348,000
Thebaine (for sale)	2,380,000
Thebaine (for conversion)	726,000

The proposed aggregate production quota for Amphetamine is being reserved pending the completion of a review of data on hand relative to this substance. It is anticipated that DEA will publish

a proposed aggregate production quota for 1977 for this substance in the near future.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. These comments or objections should state with particularity the issues concerning which the person desires to be heard. A person may object or comment on the proposals relating to any one or more of the above mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by October 29, 1976. If a person believes that one or more issues raised by him warrant a full adversary-type hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrants a full adversary-type hearing, the Administrator shall order a public hearing in the FEDERAL REGISTER summarizing the issues to be heard and setting the time for the hearing (which shall not be less than 30 days after September 29, 1976).

Dated: September 23, 1976.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc.76-28533 Filed 9-28-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

PUEBLO OF NAMBE, NEW MEXICO

Transfer of Federally Owned Lands

SEPTEMBER 20, 1976.

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

On August 2, 1976, under authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Pub. L. 93-599 dated January 2, 1975 (88 Stat. 1954), the below-described properties within Nambe Pueblo Grant were transferred by the Acting Director, Real Property Division, Fort Worth Regional Office, of the General Services Administration, to the Secretary of the Interior, without reimbursement, to be held in trust for the benefit and use of the Pueblo of Nambe in New Mexico:

NAMBE DAY SCHOOL SITE

PARCEL NO. 1

A parcel of land located in the SE¼SW¼ section 11 and in NE¼NW¼ section 14, T. 19 N., R. 9 E., New Mexico Principal Meridian, in Santa Fe County, New Mexico, described as follows:

Beginning at a point designated as corner No. 1 from which the quarter corner of sections 11 and 14, T. 19 N., R. 9 E., N.M.P.M., bears North 77°55' East 402.2 feet; thence North 83°47' West 250 feet to corner No. 2; thence North 6°13' East 250 feet to corner No. 3; thence South 83°47' East 250 feet to corner No. 4; thence South 6°13' West 250 feet to corner No. 1, the place of beginning, containing 1.43 acres.

PARCEL NO. 2

A parcel of land located in the SE¼SW¼ section 11, T. 19 N., R. 9 E., New Mexico Principal Meridian, in Santa Fe County, New Mexico, described as follows:

Beginning at a point designated as corner No. 1 of Parcel No. 1; thence N. 6°13' E. 250 feet to corner No. 4 of Parcel No. 1 which is the point of beginning and corner No. 1 for Parcel No. 2; thence N. 83°47' West, 250 feet to corner No. 2; thence North 6°13' East, 97.4 feet to corner No. 3; thence South 74°15' East, 253.6 feet to corner No. 4; thence South 6°13' West, 55.3 feet to corner No. 1 and the point of beginning of Parcel No. 2, containing 0.44 acres.

PARCEL NO. 3

A parcel of land located in the NW¼NE¼ section 14, T. 19 N., R. 9 E., New Mexico Principal Meridian, in Santa Fe County, New Mexico, described as follows:

Beginning at a point designated as corner No. 1 of Parcel No. 3 whence the quarter corner of sections 11 and 14, T. 19 N., R. 9 E. bears North 83°02' West, 278.1 feet; thence East 100.0 feet to corner No. 2; thence South 100.0 to corner No. 3; thence West 100.0 feet to corner No. 4; thence North 100.0 feet to corner No. 1 and the point of beginning, containing 0.225 acres.

PARCEL NO. 4

A parcel of land located in the NW¼NW¼ section 14, Township 19 North, Range 9 East, New Mexico Principal Meridian, in Santa Fe County, New Mexico, described as follows:

Beginning at a point designated as corner No. 1 of Parcel No. 4, whence the section corner common to sections 10, 11, 14 and 15, T. 19 N., R. 9 E., N.M.P.M. bears North 19°34' West, 712.8 feet; also the quarter corner common to sections 11 and 14, T. 19 N., R. 9 E. is North 74°20' East, 2494.5 feet from said beginning corner No. 1 of Parcel No. 4; thence South 9°08' West, 100.0 feet, to corner No. 2; thence North 80°52' West, 100.0 feet to corner No. 3; thence North 9°08' East, 100.0 feet to corner No. 4; thence South 80°52' East, 100.0 feet to corner No. 1 and the point of beginning, containing 0.225 acres.

These lands, totaling 2.32 acres, are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Pueblo of Nambe. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.76-28389 Filed 9-28-76;8:45 am]

Bureau of Land Management

[NM 28931]

NEW MEXICO

Application

SEPTEMBER 22, 1976.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 8 W.,
Sec. 13, lots 1, 2, SE¼NW¼ and NE¼SW¼.

This pipeline will convey natural gas across .184 of a mile of national resource land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-28476 Filed 9-28-76;8:45 am]

[NM 28914]

NEW MEXICO

Application

SEPTEMBER 22, 1976.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Company of America has applied for a meter site, one 6-inch and one 8-inch natural gas pipeline rights-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 20 S., R. 28 E.,
Sec. 20, S½SW¼, N½SE¼ and SW¼SE¼;
Sec. 21, N½NE¼, SW¼NE¼, S½NW¼ and NW¼SW¼;
Sec. 29, W½NE¼, N½NW¼ and NW¼SE¼.

The pipelines and meter site will be used in connection with natural gas operations and will cross 2.819 miles of national resource land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their

name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-28477 Filed 9-28-76;8:45 am]

Office of the Secretary

[INT. FES 76 49]

TIMBER MANAGEMENT

Availability of Final Environmental Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)(1970), the Bureau of Land Management has prepared a Final Environmental Impact Statement on its Timber Management Program. The statement addresses itself to all timber management activities that are currently carried out or have potential for application on the forests under the Bureau's administration. The impacts of the practices are discussed both individually and on a cumulative basis.

In addition to assessing the individual and cumulative impacts on a program-wide basis, the final environmental statement will provide a foundation and framework for environmental impact statements which will be prepared covering each of the sustained-yield units in western Oregon; for the timber management program in the Couer d'Alene District, Idaho and Ukiah District, California; and any other subsequent environmental impact statements determined necessary on the sustained-yield forests outside western Oregon or on a site specific project.

Copies of the final impact statement are available at the following Bureau of Land Management Offices:

Alaska State Office: 555 Cordova Street, Anchorage, Alaska 99501
Arizona State Office: Federal Building, Room 3022, Phoenix, Arizona 85025
California State Office: 2800 Cottage Way, Room E-2841, Sacramento, California 95825
Colorado State Office: 1600 Broadway, Room 700, Denver, Colorado 80202
Idaho State Office: Federal Building, Room 396, 550 West Fort Street, Boise, Idaho 83702
Montana State Office: (N. Dak., S. Dak.), Federal Building, 316 North 26th Street, Billings, Montana 59101
Nevada State Office: Federal Building, 300 Booth Street, Reno, Nevada 89502
New Mexico State Office: Federal Building, P.O. Box 1449, Santa Fe, New Mexico 87501
Oregon State Office: (Washington), 729 Northeast Oregon Street, P.O. Box 2965, Portland, Oregon 97208.
Utah State Office: Federal Building, 125 South State Street, Salt Lake City, Utah 84111
Wyoming State Office: (Nebraska, Kansas), 2120 Capitol Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001
Washington, D.C.: Office of Public Affairs (130), Room 5643, Interior Building, Washington, D.C. 20240
For All Other States:
Eastern States Office: Robin Building, 7981 Eastern Avenue, Silver Spring, Maryland 20910

Complimentary review copies will be limited to one per request until supplies are exhausted. Please refer to the statement number, INT-FES 76-49, when submitting a request.

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

SEPTEMBER 24, 1976.

[FR Doc.76-28480 Filed 9-28-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A377]

MISSOURI

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Missouri Counties as a result of adverse weather conditions described below:

Andrew—*Freeze* May 2, and 7, *Hail* June 7, *Drought* June 1 through August 31, 1976.
Audrain—*Drought* June 1 through August 31, 1976.
Bates—*Drought* June 1 through August 31, 1976.
Boone—*Freeze* May 3, *Drought* June 1 through August 31, 1976.
Buchanan—*Freeze* May 3, *Drought* June 1 through August 31, 1976.
Camden—*Freeze* April 26 and May 3 and 18, *Drought* June 1 through August 31, 1976.
Caldwell—*Drought* June 1 through August 31, 1976.
Carroll—*Freeze* May 5, *Drought* June 1 through August 31, 1976.
Chariton—*Drought* June 1 through August 31, 1976.
Clay—*Freeze* April 30 and May 3, *Drought* June 1 through August 31, 1976.
Clinton—*Freeze* May 3, *Drought* June 1 through August 31, 1976.
Daviess—*Freeze* May 15, *Drought* June 1 through August 31, 1976.
DeKalb—*Freeze* May 12, *Drought* June 1 through August 31, 1976, and *Hail* and *high winds* August 11, 1976.
Franklin—*Freeze* April 26 *and* May 3 and 4, *Drought* June 1 through August 31, 1976.
Gasconade—*Freeze* April 25 and May 3, *Drought* June 1 through August 31, 1976.
Gentry—*Drought* June 1 through August 31, 1976.
Grundy—*Drought* June 1 through August 31, 1976.
Harrison—*Dry winter* November 30, 1975, through March 1, 1976, *Freeze* April 26 and May 3, *Excessive Rain* April 18, *Hail* August 13, *Drought* June 1 through August 31, 1976.
Howard—*Freeze* May 3 and 12, *Drought* June 1 through August 31, 1976.
Hickory—*Freeze* April 28 and May 3, *Drought* June 1 through August 31, 1976.
Linn—*Drought* June 1 through August 31, 1976.
Livingston—*Drought* June 1 through August 31, 1976.
Macon—*Drought* June 1 through August 31, 1976.
Miller—*Freeze* April 25, *Drought* June 1 through August 31, 1976.
Montgomery—*Freeze* April 15 through May 5, *Drought* June 1, through August 31, 1976.
Morgan—*Freeze* April 28, *Drought* June 1 through August 31, 1976.
Osage—*Freeze* April 25 through May 8, *Drought* June 1 through August 31, 1976.
Pettis—*Freeze* May 3 and 12, *Drought* June 1 through August 31, 1976.
Phelps—*Freeze* April 26 and May 2 and 3, *Drought* June 1 through August 31, 1976.
Platte—*Freeze* May 3, *Drought* June 1 through August 31, 1976.
Ray—*Freeze* May 1 through 6, *Drought* June 1 through August 31, 1976.
Randolph—*Drought* June 1 through August 31, 1976.
St. Charles—*Drought* June 1 through August 31, 1976.
St. Louis—*Freeze* April 26, May 2 through May 9, *Drought* June 1 through August 31, 1976.
Shelby—*Drought* June 1 through August 31, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Christopher S. Bond that such designation be made.

Applications for emergency loans must be received by this Department no later than November 11, 1976, for physical losses and June 10, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 21st day of September 1976.

JOSEPH R. HANSON,
Acting Administrator, Farmers Home Administration.

[FR Doc.76-28429 Filed 9-28-76;8:45 am]

[Notice of Designation Number A375]

SOUTH CAROLINA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following South Carolina Counties as a result of excessive rainfall occurring in the counties on the dates shown below.

Allendale—May 23, 1976, through July 6, 1976.
Hampton—May 15, 1976, through July 8, 1976.
Jasper—May 15, 1976, through July 20, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor James B. Edwards that such designation be made.

Applications for emergency loans must be received by this Department no later

than October 31, 1976, for physical losses and June 1, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 21st day of September 1976.

JOSEPH R. HANSON,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-28430 Filed 9-28-76;8:45 am]

Forest Service

CHALLIS NATIONAL FOREST LIVESTOCK ADVISORY BOARD

Meeting

The Challis National Forest Livestock Advisory Board will meet at 1:00 p.m., October 28, 1976, at the Challis National Forest Supervisor's Office, Challis Idaho.

This will be the annual meeting of the Advisory Board. The duties of the board are solely advisory and pertain generally to the regulations and/or instructions relating to the use of National Forest lands affecting the administration of grazing in the area represented by the Board. There are no specific topics identified as yet. We will generally be discussing the past year's range management activities and the planned activities for Fiscal Year 1977.

The meeting will be open to the public. Persons who wish to attend should notify William Paddock, Secretary, at the Challis National Forest Supervisor's Office, Challis, Idaho 83226 (area code 208-879-2285).

Any member of the public who wishes to do so shall be permitted to file a written statement with the committee, before or after the meeting.

To the extent that time permits, interested persons may be permitted by the committee chairman to present oral statements at the meeting.

Dated: September 21, 1976.

WILLIAM R. PADDOCK Jr.,
Acting Forest Supervisor.

[FR Doc.76-28479 Filed 9-28-76;8:45 am]

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE OF THE AMERICAN ECONOMIC ASSOCIATION

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix I, (Supp. V, 1975)), notice is hereby given that the Census Advisory Committee of the American Economic Association will convene on October 22, 1976, at 9:15 a.m. in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Economic Association advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning the economic censuses; reviews major aspects of the Bureau's programs, and advises on the role of analysis within the Bureau and the need for providing data in more detail.

The Committee is composed of 15 members of the American Economic Association.

The agenda for the meeting is: (1) Topics of current interest including Census Bureau organization, staff changes, status of the Ashbrook Amendment to the Mid-decade Census Bill, and budget developments; (2) alternatives to the head of household concept; (3) impact of Office of Management and Budget guidelines on reducing paper work—on Census Bureau programs, on the measurement of respondent burden, and on the criteria for response rates; (4) summary findings of the recordkeeping practices survey; and (5) preliminary findings from the Inventory Research Project.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Miss Shirley Kallek, Associate Director for Economic Fields, Bureau of the Census, Room 2061, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233.) Telephone (301) 763-5274.

Dated: September 24, 1976.

VINCENT P. BARABBA,
Director, Bureau of the Census.

[FR Doc.76-28467 Filed 9-28-76;8:45 am]

SURVEY OF DISTRIBUTORS' STOCKS OF CANNED FOODS

Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct its annual survey of inventories covering 30 canned and bottled products, including vegetables, fruits, juices, and fish as of December 31, 1976. This survey, which will be conducted under the provisions of title 13, United States Code, sections 181, 224, and 225, provides the only continuing source of information on stocks of the specified canned foods held by wholesalers and in warehouses of retail multiunit organizations.

On the basis of information received by the Bureau of the Census, these data will have significant application to the needs of the public, industry and the distributive trades, as well as governmental agencies. These data are not publicly available from nongovernmental or other governmental sources.

Such survey, if conducted, shall begin not earlier than October 29, 1976.

Reports will not be required from all firms, but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods in order to provide yearend inventories of the specified canned food items with measurable reliability. These stocks will be measured in terms of actual cases, with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." (In addition, multiunit firms will be requested to update the list of their establishments maintaining canned food stocks.)

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233. Any suggestions or recommendations concerning the subject matter of this survey will receive consideration if submitted in writing to the Director on or before October 29, 1976.

Dated: September 24, 1976.

VINCENT P. BARABBA,
Director,
Bureau of the Census.

[FR Doc.76-28468 Filed 9-28-76;8:45 am]

National Oceanic and Atmospheric Administration

ARCHER-DANIELS-MIDLAND CO.

Receipt of Application for Certificate of Exemption

Notice is hereby given that the following applicants have applied in due form for a Certificate of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

APPLICANTS

(1) Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, Illinois 62526.

PERIOD OF EXEMPTION

The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a three-year period.

COMMERCIAL ACTIVITIES EXEMPTED

(i) The prohibition, as set forth in section 9(a)(1)(A) of Act, to export any such species part from the United States;

(ii) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part;

(iii) The prohibition, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

PARTS OR PRODUCTS EXEMPTED

Approximately 7,588,825 pounds of sperm whale oil and derivates of sperm whale oil.

(2) Dome Laboratories, Division of Miles Laboratories, Inc., 400 Morgan Lane, West Haven, Connecticut 06516.

PERIOD OF EXEMPTION

The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

COMMERCIAL ACTIVITIES EXEMPTED

(i) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part.

(ii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

PARTS OR PRODUCTS EXEMPTED

Approximately 733.7 kg. of spermaceti flakes and 70,753 units of various dermatological creams containing spermaceti.

(3) Delbay Pharmaceuticals, Inc., 1011 Morris Avenue, Union, New Jersey 07083.

PERIOD OF EXEMPTION

The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

COMMERCIAL ACTIVITIES EXEMPTED

(i) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part;

(ii) The prohibition, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

PARTS OR PRODUCTS EXEMPTED

Approximately 287 kg. of spermaceti flakes and 1,227,316 units of Lotrimin Cream, a dermatological preparation containing spermaceti.

(4) Indian Arts and Crafts, Inc., 1119 Mercer Street, Seattle, Washington 98109.

PERIOD OF EXEMPTION

The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

COMMERCIAL ACTIVITIES EXEMPTED

(i) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part;

(ii) The prohibition, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

PARTS OR PRODUCTS EXEMPTED

Approximately 1,845 jewelry items made of carved whale teeth and 118 jewelry items made of etched baleen.

Written comments on these applications may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before October 29, 1976.

Dated: September 23, 1976.

ROBERT J. AYERS,
Acting Associate Director for Resource Management.

[FR Doc. 76-28384 Filed 9-28-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 76F-0093]

AMERICAN CYANAMID CO.

Filing of Amendment to Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice was given in the FEDERAL REGISTER of April 8, 1976 (41 FR 14914) that a petition (FAP 6B3151) had been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that § 121.2514 *Resinous and polymeric coatings* (21 CFR 121.2514) be amended by revising paragraph (b)(3) (xii) and (xiii) to provide for safe use of dodecyl benzenesulfonic acid as a curing catalyst for urea-formaldehyde and melamine-formaldehyde resins in coatings intended for food-contact use.

In this document, notice is given that instead of urea-formaldehyde and melamine-formaldehyde resins, the petition now proposes the safe use of dodecyl benzenesulfonic acid as a curing catalyst for urea-formaldehyde and triazine-formaldehyde resins in coatings intended for food-contact use.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: September 21, 1976.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.76-28441 Filed 9-28-76;8:45 am]

[Docket No. 76F-0374]

AMERICAN CYANAMID CO.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3182) has been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that § 121.2541 *Emulsifiers and/or surface-active agents* (21 CFR 121.2541) be amended to provide for the safe use of disodium 4-isodecyl sulfosuccinate; sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether disodium salt; and sulfosuccinic acid 4-ester with polyethylene glycol nonylphenyl ether disodium salt as emulsifiers and/or surface-active agents intended for food-contact use.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: September 21, 1976.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.76-28442 Filed 9-28-76;8:45 am]

[NADA No. 47-368V]

BEECHAM LABORATORIES

Griseofulvin Capsules; Withdrawal of Approval of New Animal Drug Application

The Director of the Bureau of Veterinary Medicine of the Food and Drug Administration is withdrawing approval of a new animal drug application (NADA) for Griseofulvin Capsules, effective September 29, 1976.

Under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority redelegated to the Director (21 CFR 5.29) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), the following notice is issued:

Beecham Laboratories, 501 Fifth St., Bristol, TN 37620, holder of approved NADA No. 47-368V for Griseofulvin Capsules has requested by letter, dated July 9, 1976, that approval of the NADA be withdrawn and has waived its opportunity for a hearing. The NADA, which was originally approved March 2, 1972, provides for use of the drug in dogs and cats for treating infections of the skin, hair, and nails caused by certain dermatophytic fungi. The firm has requested that the NADA be withdrawn because the drug is no longer being marketed.

Therefore, in accordance with § 514.115 (d) (21 CFR 514.115(d)), notice is given that approval of NADA 47-368V and all supplements and amendments thereto for Griseofulvin Capsules is hereby withdrawn, effective September 29, 1976.

Published elsewhere in this issue of the FEDERAL REGISTER is an amendment to § 520.1100 *Griseofulvin* (21 CFR 520.-1100) to reflect this notice.

Dated: September 21, 1976.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.76-28444 Filed 9-28-76;8:45 am]

[Docket No. 76F-0387]

BUCKMAN LABORATORIES, INC.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3184) has been filed by Buckman Laboratories, Inc., 1256 North McLean Blvd., Memphis, TN 38108, proposing that § 121.2526 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 121.-2526) be amended to provide for the safe use of 1-chloro-2, 3-epoxypropane polymer with monomethylamine, reaction product with N, N, N', N'-tetramethylenediamine as a component of paper and paperboard intended for use in contact with aqueous and fatty foods.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: September 21, 1976.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.76-28440 Filed 9-28-76;8:45 am]

[Docket No. 76G-0378]

GENERAL MILLS, INC.

Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201 (s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1786 (21 U.S.C. 321(s), 348, 371 (a))) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 6G0079) has been filed by General Mills, Inc., P.O. Box 1113, Minneapolis, MN 55440 and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that plant sterols, phytosterols, and sitosterols when used in foods as emulsifying agents are generally recognized as safe (GRAS).

Any petition which meets the format requirements outlined in 21 CFR 121.40 is filed by the Food and Drug Administration. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before November 29, 1976 review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: September 21, 1976.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.76-28443 Filed 9-28-76;8:45 am]

[Docket No. 76F-0371]

MONSANTO CO.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6A3163) has been filed by the Monsanto Co., 800 N. Lindbergh Blvd., St. Louis, MO 63166, proposing that § 121.-1088 *Boiler water additives* (21 CFR 121.-1088) be amended to provide for the safe use of 1-hydroxyethylidene-1,1-diphosphonic acid and its sodium and potassium salts as boiler water additives used in the preparation of steam that will contact food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: September 21, 1976.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.76-28439 Filed 9-28-76;8:45 am]

[Docket No. 76N-0307; DESI 8085]

METHOTREXATE AND METHOTREXATE SODIUM

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

Correction

In FR Doc. 76-26636, appearing on page 38803 in the FEDERAL REGISTER of Monday, September 13, 1976, paragraph 3(b) on page 38804 should be corrected to read, "On or before March 14, 1977 data to show that it is biologically available in the formulation marketed.".

[Docket No. 76N-0232]

HESS & CLARK, ET AL.

Nitrofurazone (NF-7); Opportunity for Hearing on Proposal To Withdraw Approval of Certain New Animal Drug Applications

Correction

In FR Doc. 87-23622 appearing on page 34899 in the issue for Tuesday, August 17, 1976, the following corrections should be made:

(1) The heading should have read as set forth above.

(2) On page 34900, the fourth line of the middle column should be deleted and the following line inserted: "for furazolidone (NF-180) and furalta-".

(3) On page 34902, the 9th line of the second full paragraph of the last column, should have read as follows: "supporting white fibrous connective tissue may".

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Consumer Affairs and Regulatory Functions

[Docket No. N 76-582]

NATIONAL MOBILE HOME ADVISORY COUNCIL

Executive Committee Meeting

In accordance with section 605 of Title VI of the Housing and Community Development Act of 1974 (Pub. L. 93-383) and Section 10(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463) announcement is made of the following meeting:

The Executive Committee of the National Mobile Home Advisory Council will meet on October 15, 1976. The meeting is open to the public and will convene at 9:00 A.M. in Room 10233, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

The Executive Committee will meet for the purpose of developing recommendations to the Council on the following:

1. Petitions received by the Mobile Home Standards Division dealing with unresolved issues;

2. The preemptive nature of the mobile home standards and enforcement regulations;

3. Possible amendments to the Council Charter;

4. Ways in which the Advisory Council can be more useful to the Mobile Home Standards Division;

5. Outline of a HUD purchasers' manual; and

6. The relationship of the NFPA–ANSI mobile home committee and the Mobile Home Standards Division.

Any member of the public may file a written statement with the Executive Committee of the Council before, during, or after the meeting. To the extent that time permits, the Chairman of the Council may allow public presentation of oral statements during the meeting.

All communications regarding this Executive Committee meeting should be addressed to:

Robert G. Hoag, Committee Management Officer, Room 3280, 451 Seventh Street, S.W., Washington, D.C. 20410.

Issued in Washington, D.C., on September 24, 1976.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer Affairs and Regulatory Functions.

[FR Doc.76–28534 Filed 9–24–76;4:39 pm]

Federal Disaster Assistance Administration

[FDAA–521–DR; N 76–580]

CALIFORNIA

Major Disaster and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D–74–285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on September 21, 1976, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of California resulting from severe storms and flooding associated with Tropical Storm Kathleen beginning about September 10, 1976, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of California.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D–74–285, I hereby appoint Mr. Robert C. Stevens, FDAA Region IX, to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of California to have been adversely affected by this declared major disaster:

The Counties of:
Imperial Riverside

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: September 22, 1976.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.76–28469 Filed 9–28–76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Secretary of Transportation

CONSTRUCTION OF I–66, ARLINGTON AND FAIRFAX COUNTIES, VIRGINIA

Delineation of Issues for Discussion

On August 27, 1976, I announced that I would conduct a public hearing on October 2 on whether or not to approve an application for a Federal grant for construction of Interstate Highway 66 between the Capital Beltway (Interstate Highway 495) and Rosslyn, Virginia (41 FR 36536, August 30, 1976). At that time, copies of the "Proposed Four Lane Multi-Modal Concept Final Environmental/Section 4(f) Statement", which had been prepared jointly by the Virginia Department of Highways and Transportation (VDHT) and the Federal Highway Administration (FHWA), were made available to the interested public. That document delineates the current proposal by VDHT and FHWA for construction of I–66. I had earlier released, on August 1, 1975, my decision not to approve the application for I–66 as it was then proposed (as a six-lane facility with the Metro in part of the median), and my reasons therefor.

In addition to the focus which these two documents will provide to the testimony at the forthcoming public hearing, I believe it would be useful to highlight the issues which I currently believe to be the major ones in considering this matter. The issues are set forth below.

TRANSPORTATION ISSUES

What are the major transportation benefits which the proposal will provide? Will the average time saved during the peak hours as a result of this facility be in the range of 5–8 minutes? How significant a consideration is this? Will there be a significant reduction in transportation congestion on local streets and arterials in Virginia if the facility is built—during peak hours, off-peak hours? How significant a consideration is this?

How significant will the improved access to Dulles Airport be in encouraging greater use of Dulles Airport? What will be the effect of constructing I–66 on Metro, in terms of Metro construction time and cost and in terms of competition for riders? Will the improved automobile transportation which the facility provides result in increased automobile use or a decrease in the number of vehicles? If I–66 is constructed, will there be increased or decreased congestion on the Theodore Roosevelt Bridge and in the District of Columbia?

How likely is it that there will be adequate enforcement and compliance with respect to the limitation of the facility to carpools (and buses) during the peak hours, in the peak direction? Should this matter be made a condition of the grant, if approved?

What are the significant assumptions upon which the answers to these questions are based? How valid are those assumptions?

ENVIRONMENTAL AND SOCIAL EFFECTS

How serious would the effects of the project be on community disruption and separation? What will be the air quality effects of constructing the facility? How significant are these effects? What are the anticipated overall effects on public parks and recreation areas, and how serious are they? Will there be significant adverse noise effects? How significant are the effects on family and business displacement, and other environmental and social values?

Will there be significant benefits to the environment if the facility is constructed, and what will those benefits be? What are the energy consumption implications of the proposal?

What are the significant assumptions upon which the answers to these questions are based? How valid are those assumptions?

CONSISTENCY WITH OVERALL PLANNING

Is the proposal consistent or inconsistent with areawide planning? In what way? Is it consistent with the goals and planning of Fairfax County? Arlington County? The District of Columbia? Other affected jurisdictions? Are there other transportation alternatives which will better meet the planning objectives of the region and its communities?

For example, would construction of I–66 only to Glebe Road, and reliance on Metro for service into the District of Columbia, be a desirable alternative approach?

If I–66 were constructed, would it be desirable to terminate the Metro line at the Glebe Road station?

Would a two-lane reversible highway for buses and carpools only, rather than a four-lane facility, be a preferable alternative?

LEGAL ISSUES

Am I required by statutory provisions to approve the proposal? To disapprove it? Has the proposal been developed through a continuing, comprehensive, coordinated transportation planning process, as required by law? Does it meet the statutory requirements for consistency with metropolitan development goals and with plans to achieve ambient air quality standards? Because it would require the taking of public parklands and recreation areas, does it meet the requirements of section 4(f) of the DOT Act—that there are no "prudent and feasible alternatives" to the taking of such lands, and that all possible planning has been done to minimize harm to those lands?

Can the Department of Transportation legally require the State of Virginia

to restrict access to I–66 to buses and carpools during the peak hours, in the peak direction, and to exclude trucks entirely? If so, what legal mechanism(s) would be appropriate? Can the Department of Transportation legally prevent future attempts to add additional lanes to the four lanes now proposed?

Are there other major legal issues that warrant consideration?

COST

What is a reasonable estimate of the cost of the proposal, as compared to the Base Case?

DESIGN CONSIDERATIONS

Will the overpasses and underpasses be designed to carry only the four lanes now proposed (and the Metro facility), or will they be designed for possible future expansion of the facility to six or more lanes? Are there major design changes which should be made?

OTHER ISSUES

Are there other significant issues which should be evaluated in arriving at this decision?

Issued in Washington, D.C., September 27, 1976.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

[FR Doc.76-28702 Filed 9-28-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 622-7]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Receipt of Application for Equivalent Method Determination

Notice is hereby given that on August 19, 1976, the Environmental Protection Agency received an application from The Bendix Corporation, P.O. Box 831, Lewisburg, West Virginia, to determine if its Model 8300A Sulfur analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR Part 53, promulgated February 18, 1975 (40 FR 7044). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the FEDERAL REGISTER.

WILSON K. TALLEY,
Assistant Administrator for Research and Development.

SEPTEMBER 21, 1976.

[FR Doc.76-28376 Filed 9-28-76;8:45 am]

[FRL 623-5; OPP-33000/464]

RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amened ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement, which were effectuated by the enactment of the recent amendments to FIFRA on November 28, 1975 [Pub. L. 94-140], and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, SW., Washington, D.C. 20460. In the case of applications subject to the new section 3 regulations, and applications not subject to the new section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, and 13—202/755-9315
PM 21 and 22—202/426-2454
PM 24—202/755-2196
PM 31—202/426-2635
PM 33—202/755-9041
PM 15, 16, and 17—202/426-9425
PM 23—202/755-1397
PM 25—202/755-7012
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before November 29, 1976. With the exception of 2(c) applications not subject to the new section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under section 10 of FIFRA, as amended, should be made on or before October 29, 1976.

Dated: September 21, 1976.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

APPLICATIONS RECEIVED (OPP-33000/464)

EPA Reg. No. 4-146. Bonide Chemical Co., 382 Genesee St., Utica NY 13502. CRABGRASS PREVENTER & WEED KILLER. Active Ingredients: Siduron [1-(2-methylcyclohexyl)-3-phenylurea] 2.75%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 72-552. Miller Chemical & Fertilizer Corp., PO Box 333, Hanover PA 17331. MILLER CRABGRASS KILLER CONTAINING TUPERSAN. Active Ingredients: Siduron (1-(2-methylcyclohexyl)-3-phenylurea) 4.7%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 134-52. Rhodia, Inc., PO Box 1706, Ashland OH 44805. CATTLE LOUSE POWDER. Active Ingredients: Dimethyl Phosphate of Alpha-Methylbenzyl 3-hydroxy-cis-crotonate 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM15

EPA Reg. No. 201-290. Shell Chemical Co., 2401 Crow Canyon Rd., San Ramon CA 94583. SHELL 2% PHOSDRIN INSECTICIDE DUST. Active Ingredients: Alpha Isomer of 2-Carbomethoxy-1-methylvinyl Dimethyl Phosphate 1.2%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 201-291. Shell Chemical Co. SHELL PHOSDRIN 10.3 WS WATER SOLUBLE INSECTICIDE. Active Ingredients: Alpha Isomer of 2-Carbomethoxy-1-methylvinyl Dimethyl Phosphate 60.0%. Method

of Support: Application proceeds under 2 (b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 239–817. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHO MALATHION-SULFUR 4–50 DUST. Active Ingredients: Malathion 4%; Sulfur 50%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 239–1412. Chevron Chemical Co. ORTHO KELTHANE-MALATHION 3-3 DUST. Active Ingredients: 1,1-bis (p-chlorophenyl) 2,2,2-trichloroethanol 3%; Malathion 3%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 279–2876. FMC Corp., Ag. Chem. Div., 100 Niagra St., Middleport NY 14105. FURADAN 4 FLOWABLE Active Ingredients: Carbofuran 40.64%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA Reg. No. 279–2876. FMC Corp. FURADAN 4 FLOWABLE. Active Ingredients: Carbofuran 40.64%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA Reg. No. 352–354. E. I. Du Pont de Nemours & Co., Inc., Wilmington DE 19898. BENLATE BENOMYL FUNGICIDE. Active Ingredients: Benomyl Methyl 1-(butylcarbamoyl) - 2-benzimidazole carbamate 50%. Method of Support: Application proceeds under 2(a) of interim policy. PM22

EPA Reg. No. 449–386. Techne Corp., c/o Farmland Industries, Inc., PO Box 7305, Kansas City MO 64116. TECHNE MALATHION-5 DUST. Active Ingredients: Malathion (0,0-Dimethyl dithiophosphate of diethyl mercaptosuccinate) 5.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 449–492. Techne Corp., c/o Farmland Industries, Inc. TECHNE MALATHION 25% WP. Active Ingredients: Malathion (0,0-Dimethyl dithiophosphate of diethyl mercaptosuccinate) 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 538–RUA. O. M. Scott & Sons, Marysville OH 43040. PROGROW BRAND ORNAMENTAL HERBICIDE I. Active Ingredients: oxadiazon 2-tert-butyl-4-(2,4 - dichloro - 5 - isopropoxyphenyl) - Δ - 2-1,3,4-oxadiazon-5-one 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA File Symbol 538–RUT. O. M. Scott & Sons. PROGROW BRAND ORNAMENTAL HERBICIDE III. Active Ingredients: oxadiazon 2-tert-butyl-4-(2,4-dichloro-5-isopropoxyphenyl) - Δ - 2 - 1,3,4 - oxadiazon - 5 - one 8.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 538–141. O. M. Scott & Sons. SCOTTS PROTURF BRAND 18–5–5 FERTILIZER PLUS 101 BROAD SPECTRUM FUNGICIDE. Active Ingredients: Chlorothalonil (Tetrachloroisophthalonitrile) 11.25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 550–42. Van Waters & Rogers, 2256 Junction Ave., San Jose CA 95131. GUARDSMAN BOTRAN 6% DUST FUNGICIDE. Active Ingredients: 2,6-Dichloro-4-Nitroaniline 6.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 550–86. Van Waters & Rogers. GUARDSMAN BOTRAN 50% DUST FUNGICIDE. Active Ingredients: 2,6-Dichloro-4-Nitroaniline 50%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration, PM21

EPA Reg. No. 746–102. M.F.A. Oil Co, PO Box 519, Columbia MO 6520I. M.F.A. 3% CIODRIN INSECTICIDE. Active Ingredients: Dimethyl Phosphate of Alpha-Methylbenzyl 3-hydroxy-cis-crotonate 3.0%. Method of Support: Application proceeds under 2 (b) of interim policy. Application for reregistration. PM15

EPA Reg. No. 779–30. Faesy & Besthoff, Inc, 143 River Rd., Edgewater NJ 07020. MALATHION. Active Ingredients: Malathion (0,0-Dimethyl dithiophosphate of diethyl mercaptosuccinate) 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for registration. PM16

EPA Reg. No. 960–161. Balcom Chemicals, 240 22nd St., PO Box 667, Greeley CO 80631. BALCOM ZIPCIDE. Active Ingredients: Dimethyl Phosphate of Alpha-Methylbenzyl 1-3-hydroxy-cis crotonate 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM15.

EPA File Symbol 1022–U00. Chapman Chemical Co., PO Box 9158, Memphis TN 38109. PQ-15 PT. Active Ingredients: Copper 8-quinolinolate 0.35%. Method of Support: Application proceeds under 2(b) of interim policy. PM22

EPA Reg. No. 1812–104. Parramore & Griffin, PO Box 1847, Valdosta GA 31601. 2% PHOSDRIN DUST. Active Ingredients: Alpha isomer of 2-Carbomethoxy-1-methylvinyl Dimethyl Phosphate 1.2%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 2342–617. Kerr-McGee Chemical Corp., Oklahoma City OK 73125. FASCO PHOSDRIN DUST-2. Active Ingredients: Alpha isomer of 2-carbomethoxy-1-methylvinyl dimethyl phosphate 1.2%; Related compounds 0.8%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 2724–146. Starbar, Inc., 12,200 Denton Dr., Dallas TX 75234. STARBAR. Active Ingredients: dimethyl phosphate of alpha - methylbenzyl 3 - hydroxy - cis - crotonate 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM15

EPA Reg. No. 3125–181. Chemagro Agricultural Div., Mobay Chemical Corp., Box 4913, Kansas City MO 64120. GOPHACIDE 0.2% BAIT RODENTICIDE. Active Ingredients: 0,0 - Bis(4 - chlorophenyl) (1 - iminoethyl) phosphoramidothioate 0.2%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM11

EPA Reg. No. 3125–182. Chemagro Agricultural Div., Mobay Chemical Corp. GOPHACIDE 0.1% BAIT RODENTICIDE. Active Ingredients: 0,0 - Bis(4 - chlorophenyl) (1 - iminoethyl) phosphoramidothioate 0.1%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM11

EPA Reg. 4887–17. Stephenson Chemical Co., Inc., PO Box 87188, College Park GA 30337. 4% MALATHION DUST (PREMIUM GRADE). Active Ingredients: Malathion 4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 5298–10. Old Fox Chemical, Inc., 66 Valley St., East Providence RI 02914. OLD FOX TURF GRO & CRAB CONTROL. Active Ingredients: Siduron (1-(2-Methylcyclohexyl)-3-phenylurea) 2.3%. Method of Support: Application proceeds under 2 (b) of interim policy. PM25

EPA Reg. No. 5298–11. Old Fox Chemical, Inc. GRANULAR CRAB CONTROL GRANULAR CRABGRASS KILLER CONTAINING TUPERSAN. Active Ingredients: Siduron (1-(2-Methylcyclohexyl)-3-phenylurea) 2.3%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 5535–23. J. & L. Adikes, Inc, 182–12 93rd Ave., Jamaica NY 11423. GROWELL 25% MALATHION. Active Ingredients: Malathion 25.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration, PM16

EPA Reg. No. 5905–257. Helena Chemical Co., Clark Tower, 51 Poplar Ave., Memphis TN 38137. HELENA ANIMAL HEALTH 3% CIODRIN DUST. Active Ingredients: Dimethyl phosphate of alpha-methylbenzyl 3-hydroxy-cis-crotonate 3.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM15

EPA Reg. No. 5967–131. Moyer Chemical Co., PO Box 945, San Jose CA 95108. MALATHION SULFUR DUST NO. 4–25. Active Ingredients: Malathion 4.0%; Sulfur 25.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 5967–140. Moyer Chemical Co. MALATHION 25–W. Active Ingredients: Malathion 25.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 6009–G. Eastern Color & Chemical Co., 35 Livingston St., Providence RI 02940. ECCO MP–170–CONC. Active Ingredients: 2,2'-Methylenebis (4-Chlorophenol) 17.0%. Method of Support: Application proceeds under 2(c) of interim policy PM32.

EPA Reg. No. 7401–46. Voluntary Purchasing Groups, Inc., PO Box 460, Bonham TX 75418. FERTI-LOME PROFESSIONAL CRABGRASS CONTROL. Active Ingredients: N-butyl-N-ethyl-a,a,a-trifluoro-2,6-dinitro-p-toluidine 2.5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 7401–85. Voluntary Purchasing Groups, Inc. FERTI-LOME READY TO USE WEED AND WILD GRASS KILLER. Active Ingredients: Sodium Chlorate. 2.5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

[FR Doc.76-28377 Filed 9-28-76;8:45 am]

[FRL 623-4; OPP-33000/465]

RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement, which were effectuated by the enactment of the recent amendments to FIFRA on November 28, 1975 [Pub. L. 94–140], and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applica-

tions for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, S.W., Washington DC 20460. In the case of applications subject to the new section 3 regulations and applications not subject to the new section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, and 13—202/755-9315
PM 21 and 22—202/426-2454
PM 24—202/755-2196
PM 31—202/426-2635
PM 33—202/755-9041
PM 15, 16, and 17—202/426-9425
PM 23—202/755-1397
PM 25—202/755-7012
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before November 29, 1976. With the exception of 2(c) applications not subject to the new section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under Section 10 of FIFRA, as amended, should be made on or before October 29, 1976.

Dated: September 21, 1976.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED (OPP-33000/465)

EPA Reg. No. 241-68. American Cyanamid Co., Agricultural Div., PO Box 400, Princeton NJ 08540. MALATHION PREMIUM GRADE 1% DUST INSECTICIDE. Active Ingredients: Malathion 1.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 1016-78. Union Carbine Corp., Ag. Products Div., 1730 Pennsylvania Ave., NW, Washington DC 20006. TEMIK 15% GRANULAR ALDICARB PESTICIDE. Active Ingredients: Aldicarb [2-methyl-1-2-(methylthio) propionaldehyde *O*-(methylcarbamoyl) oxime] 15%. Method of Support: Application proceeds under 2(a) of interim policy. PM12

EPA Reg. No. 1842-227. Triangle Chemical Co., Box 4528, Macon GA 31208. TRIANGLE 25% MALATHION WETTABLE POWDER PREMIUM GRADE. Active Ingredients: O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 1964-EN. New South Manufacturing Co., PO Box 10025, Atlanta GA 30319. NEGA-CIDE NP 9.0. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 4.5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 1964-RO. New South Manufacturing Co. MEGA-CIDE NPR 9.0. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimyethyl benzyl ammonium chlorides 4.5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 4.5%; Tetrasodium ethylenediamine tetraacetate 2.0%; Sodium Carbonate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA Reg. No. 1990-154. Farmland Industries, Inc., PO Box 7305, Kansas City MO 64116. CO-OP MALATHION DUST 4%. Active Ingredients: Malathion 4%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 2342-258. Kerr-McGee Chemical Corp., Kerr-McGee Center, PO Box 25861, Oklahoma City OK 73125. FASCO MALATHION 25 WP. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethylmercaptosuccinate 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 2342-259. Kerr-McGee Chemical Corp. FASCO MALATHION DUST 5. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethylmercaptosuccinate) 5%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 3468-14. Schall Chemical, Inc., Box 862, Monte Vista and Delta CO 81144. 4% MALATHION DUST. Active Ingredients: Malathion O,O-dimethyl phosphorodithioate of diethyl mercaptosuccinate 4.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 3743-217. Southern Agricultural Chem, Inc., PO Drawer 527, Kingstree SC 29556. MALATHION 25% WETTABLE POWDER. Active Ingredients: Malathion (O,O-dimethyl dithiophosphate of diethyl mercaptosuccinate) 25.0% Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 4087-T. Industrial Chemical Co., Inc., 2655 Ingalls St., San Francisco CA 94124. SANITIZER-CLEANER 45-7. Active Ingredients: Alkyl (60% C14, 30% C16, 5% C12, 5% C18) Dimethyl Benzyl Ammonium Chlorides 1.28; Alkyl (68% C12, 32% C14) Dimethyl Ethylbenzyl Ammonium Chlorides 1.28%; Sodium carbonate 3.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA Reg. No. 10873-14. Tifton Chemical Co., PO Box 5, Tifton GA 31794. TIFCHEM 2% PHOSDRIN DUST. Active Ingredients: Alpha Isomer of 2-Carbomethoxy-1-methylvinyl Dimethyl Phosphate 1.2%; Related Compounds 0.8%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 11524-3. Control Chemical Corp., 2090 Route 110, Farmingdale NY 11735. SELECT-1000. Active Ingredients: Dimethylamine salt of 2-(2-methyl-4-chlorophenoxy) propionic acid 0.92%; Dimethylamine salt of 2,4-dichlorophenoxy acetic acid 2.02%; Dimethylamine salt of Dicamba (3,6-dichloro-o-anisic acid 0.21%); Dimethylamine salts of related compounds 0.03%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 12130-36. Farm Chemicals, Inc., PO Box 456, Aberdeen NC 28315. 4-2-1 TOX-ETHYL METHYL. Active Ingredients: Toxaphene 33.36%; Parathion (O, O-diethyl O-p-nitrophenyl phosphorathioate 16.68%; O,O-dimethyl O-p-nitrophenyl thiophosphate 8.34%; Xylene 36.62%). Method of Support: Application proceeds under 2(c) of interim policy. PM12

EPA File Symbol 30948-EE. Bionomical Chemicals, Chattanooga TN. CHERRY KLEANSE. Active Ingredients: Alkyl (C14 90%, C12 5%, C16 5%) dimethyl 3,4-dichlorobenzyl-ammonium chloride 1.250%; Alkyl (C14 58%, C16 28%, C12 14%) dimethyl benzyl ammonium chloride 0.625%; Alkyl (C14 90%, C12 5%, C16 5%) dimethyl ethyl ammonium bromide 0.625%; Sodium carbonate 0.500%; Ethylenediaminetetraacetic acid, tetrasodium salt 0.190%; Essential Oils 0.250%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 30948-EG. Bionomical Chemicals. LEMON KLEANSE. Active Ingredients: Alkyl (C14 90%, C12 5%, C16 5%) dimethyl 3,4-dichlorobenzyl ammonium chloride 1.250%; Alkyl (C14 58%, C16 28%, C12 14%) dimethyl benzyl amonium chloride 0.625%; Alkyl (C14 90%, C12 5%, C16 5%) dimethyl ethyl ammonium bromide 0.625%; Sodium carbonate 0.500%; Sodium metasilicate 0.500%; Essential oils 0.250%; Ethylenediaminetetraacetic acid, tetrasodium salt 0.190%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 30948-EU. Bionomical Chemicals. ORANGE KLEANSE. Active Ingredients: Alkyl (C14 90%, C12 5%, C16 5%) dimethyl 3,4-dichlorobenzyl ammonium chloride 1.250%; Alkyl (C14 58%, C16 28%, C12 14%) dimethyl benzyl ammonium chloride 0.625%; Alkyl (C14 90%, C12 5%, C16 5%) dimethyl ethyl ammonium bromide 0.625%; Sodium carbonate 0.500%; Ethylenediaminetetraacetic acid, tetrasodium salt 0.190%; Essential oils 0.250%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 33576-GI. Olin Corp., Stamford CT 60904. OLIN 3210. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

EPA File Symbol 39189-L. Envirochem, Inc., 317 St. Paul's Ave., Jersey City NJ 07306. ALGAECLEAN. Active Ingredients: Alkyl (C14 60%, C16 30%, C12 5%, C18 5%) Dimethyl Benzyl Ammonium chlorides 5.0%; Alkyl (C12 68%, C14 32%) Dimethyl Ethylbenzyl Ammonium Chlorides 5.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

[FR Doc.76-28378 Filed 9-28-76;8:45 am]

[FRL 623-2]

SCIENCE ADVISORY BOARD (EXECUTIVE COMMITTEE)

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held on October 14 and 15, 1976. The meeting will begin at 9:00 a.m. on both days in Room 1101, Waterside Mall West Tower, 401 M Street, SW., Washington, D.C.

The agenda includes reports on the activities of member committees; action to determine the approach of the Science Advisory Board to a review of research plans concerned with atmospheric sulfates; a discussion of scientific issues inherent in toxic substances legislation; a review of NAS/NRC activities on pollutant-specific summaries of scientific information; further consideration of Agency approaches to funding extramural research and development; a briefing on the status of the report of the NRC Safe Drinking Water Committee; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend, participate, present a paper, or obtain additional information should contact Dr. Thomas D. Bath, Executive Secretary, Science Advisory Board Executive Committee (202) 755-0263, no later than October 8, 1976.

THOMAS D. BATH,
Staff Director,
Science Advisory Board.

SEPTEMBER 22, 1976.

[FR Doc.76-28379 Filed 9-28-76;8:45 am]

[FRL 623-1]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (NSPS) AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS)

Modification to Delegation of Authority to State of California on Behalf of Bay Area Air Pollution Control District; Approval of "Alternative Methods" for Indicating Source Compliance With the NSPS

On May 23, 1975, pursuant to sections 111(c) and 112(d) of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) delegated authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) to the State of California on behalf of the Bay Area Air Pollution Control District (BAAPCD). A notice of this delegation was published in the FEDERAL REGISTER on September 11, 1975 (40 FR 42236).

This delegation was subject to various conditions, among them condition 6 (listed in the FEDERAL REGISTER notice as condition 5), which specified that:

The Bay Area Air Pollution Control District will utilize the methods specified in 40 CFR Parts 60 and 61 in performing source tests pursuant to the regulations. However, the District, through the Air Resources Board, has also submitted to EPA for its evaluation certain test methods normally used by the District. EPA is proceeding with its evaluation of these District methods to determine whether they are acceptable for use as "alternative" test methods within the meaning of the federal NSPS regulations. When this evaluation is completed, EPA will promptly notify the State and District and provision will be made at that time for any modification of the terms of this delegation which may then be appropriate. Any use of test methods by the District, after delegation, not in accordance with the terms and conditions of this delegation shall constitute grounds for revocation of delegation by EPA.

EPA completed its technical evaluation of the BAAPCD source test methods, as described in a November 12, 1974 letter from Milton Feldstein of the BAAPCD to Francis Perry of the California Air Resources Board (ARB), and on February 10, 1976 notified the ARB that the BAAPCD test methods for measuring sulfur dioxide, nitrogen oxides and sulfuric acid mist are adequate for indicating the compliance status of stationary sources with the applicable NSPS and are approved as "alternative methods," pursuant to 40 CFR 60.8(b), subject to the conditions specified below:

The continuous extractive nondispersive ultraviolet method for Sulfur Dioxide is approved subject to the following conditions:

1. EPA Method 6 shall be used as the reference method for calibration purposes.
2. The UV instrument shall be calibrated prior to and immediately following each performance test.
3. The calibration gases shall be introduced at the probe and not at the sample manifold.
4. Regular checks shall be made of the sample conditioning system to insure proper operation.

The chemiluminescent methods for Nitrogen Oxides is approved subject to the following conditions:

1. EPA Method 7 shall be used as the reference method for calibration purposes.
2. The chemiluminescent instrument shall be calibrated prior to and immediately following each performance test.
3. The calibration gases shall be introduced at the probe and not at the sample manifold.
4. Regular checks shall be made of the sample conditioning system to insure proper operation.

Finally, the Sulfur Dioxide and Acid Mist method is approved subject to the following condition:

1. A disc filter shall be used after the isopropyl alcohol impinger until the collection efficiency of the Bay Area quartz wool plub can be established.

Therefore, Condition 6 of the May 23, 1975 delegation of authority is modified, as follows, to permit the BAAPCD to utilize its test methods, as specified above, for determining the status of compliance, with the NSPS. For pollutants other than those discussed above, the BAAPCD shall continue to utilize the methods specified in 40 CFR Parts 60 and 61.

CONDITION 6

The Bay Area Air Pollution Control District will utilize the test methods specified in 40 CFR Parts 60 and 61, current to the date of the test, in performing source tests pursuant to their NSPS and NESHAPS regulations, except for those methods approved by EPA as "alternative methods" within the meaning of the Federal NSPS and NESHAPS regulations. On February 10, 1976 EPA approved, with certain conditions, the Bay Area Air Pollution Control District source test methods for Sulfur Dioxide, Nitrogen Oxides and Sulfuric Acid Mist as "alternative methods." Any use by the District of test methods not in accordance with the terms and conditions of this delegation shall constitute grounds for revocation of delegation by EPA.

Dated September 20, 1976.

PAUL DE FALCO, Jr.,
Regional Administrator,
Region IX, EPA.

[FR Doc.76-28375 Filed 9-28-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 20910-20915; File Nos. BR-4723, etc.; FCC 76-870]

FAULKNER RADIO, INC.

Order Designating Applications for Oral Argument Before the Commission En Banc

Adopted: September 15, 1976.
Released: September 22, 1976.

In regard to applications of Faulkner Radio, Inc., for renewal of licenses for Station WAOA, Opelika, Alabama, Dock-

et No. 20910, File No. BR-4723; Station WFRI(FM), Auburn, Alabama, Docket No. 20911, File No. BRH-2748; Station WBCA, Bay Minette, Alabama, Docket No. 20912, File No. BR-3448; Station WWSM(FM), Bay Minette, Alabama, Docket No. 20913, File No. BRH-1629; Station WGAA, Cedartown, Georgia, Docket No. 20914, File No. BR-1142; and Station WBTR(FM), Cedartown, Georgia, Docket No. 20915, File No. BRH-1705.

1. The Commission has before it for consideration the above-captioned applications for renewal of licenses, filed by Faulkner Radio, Inc., for Stations WAOA, Opelika, Alabama; WFRI(FM), Auburn, Alabama; WBCA and WWSM (FM), Bay Minette, Alabama; and WGAA and WBTR(FM), Cedartown, Georgia.

2. To place our consideration of the above-captioned applications in proper perspective, we note, by way of background, that on November 21, 1972, Faulkner Radio, Inc.'s application for renewal of license for Station WLBB, Carrollton, Georgia, was designated for evidentiary hearing. This hearing was ordered to determine, among other things, whether Faulkner Radio, Inc. had: (i) Filed a petition to deny against another applicant's non-mutually exclusive application for a new standard broadcast station in Carrollton for the purpose of delaying the processing of that application; and (ii) misrepresented itself or was lacking in candor in its dealing with the Commission. Radio Carrollton et al. 38 FCC 2d 68 (1972). The Administrative Law Judge, in an Initial Decision released April 15, 1974, found that Faulkner Radio, Inc. had not only filed its petition to deny for "* * * the invidious or underhanded purpose of delaying the processing of Radio Carrollton's application by the Commission and its staff," but, also, through its Vice-President, Robert Thorburn, on several instances, was "* * * either * * * reckless with the truth or * * * wilfully misrepresented the facts * * *." 52 FCC 2d at 1222-23, 1226. The Administrative Law Judge concluded, therefore, that, "* * * due to its demonstrated insincerity, the public interest cannot be served by granting * * * [Faulkner Radio, Inc.'s] application for renewal of license * * *" for WLBB; and, accordingly, recommended denial of the license.

3. Upon appeal, the Commission affirmed the Administrative Law Judge's Initial Decision. Radio Carrollton et al., 52 FCC 2d 1173 (1975). In so doing, the Commission found, among other things, that:

> * * * the record indicates Thorburn misrepresented facts and lacked candor by fraudulent and knowing submission of the false affidavit, and by his evasive and misleading testimony at hearing * * *. Here again, we believe the Judge's determination as to the credibility of the witnesses should not, absent some indication of abuse of discretion, be disturbed. The record evidence indicates Thorburn in his affidavit and testimony was either reckless with the truth or wilfully misrepresented facts. * * *.
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> The Commission and the Courts have consistently held that false statements, misrepresentations or lack of candor by applicants or licensees in the course of Commission proceedings raise substantial questions of basic character qualification. (citations omitted). We agree with the Judge that we cannot condone deception, even 'useless deception', by licensees, especially experienced broadcasters, and that the fact of concealment by a licensee or applicant is more significant than even the facts concealed. (citation omitted). Faulkner placed its license in jeopardy by filing a strike petition to deny. It also displayed lack of candor and committed knowing and wilfull misrepresentations by both the testimony of Thorburn at hearing and by his seeking to deceive the Commission through submission of an affidavit that was in no sense a real affidavit. In view of the nature and degree of Thorburn's misconduct, we conclude that Faulkner does not possess the requisite character qualifications of a Commission licensee * * *.

Radio Carrollton et al., 52 FCC 2d at 1180, 1182.

4. The above-captioned applications have been fully processed, and, except for the matters discussed above, Faulkner Radio, Inc. appears qualified. However, due to the serious nature of the conclusions in "Radio Carrollton, Inc.," *supra*, including the direct involvement of one of the licensee's principals in the misconduct found therein and the nature of the misconduct—i.e., giving evasive and misleading testimony at the hearing—we believe that a substantial and material question exists regarding Faulkner Radio, Inc.'s qualifications to remain a licensee of this Commission. Therefore, we believe that the above applications must be designated for oral argument to determine what effect, if any, the basic character qualification finding made against Faulkner Radio, Inc. in that proceeding has with respect to the licenses of its remaining broadcast holdings.

5. Concerning the above, we view the findings relating to licensee's character qualifications in "Radio Carrollton" as being *res judicata* as to all of its other broadcast holdings. Further, since there are no factual disputes to be resolved, but, rather, only the question as to what effect the misrepresentations made in the above proceeding may have on licensee's basic qualifications, in lieu of the normal evidentiary hearing we will order that an oral argument be held before the Commission *en banc* on the issues specified below. Faulkner Radio, Inc. is being directed herein to file a brief to the Commission concerning its position on the specified issues as well as other matters it may deem of relevance to our final determination. The Broadcast Bureau, which is being made a party to this proceeding, may also submit a brief. Both parties may file reply briefs.

6. *Accordingly, it is ordered,* That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications for renewal of licenses for Stations WAOA, WFRI(FM), WBCA, WWSM (FM), WGAA, and WBTR(FM), filed by Faulkner Radio, Inc., are designated for oral argument before the commission *en banc*, in Washington, D.C., on November 29, 1976, beginning at 2:00 p.m., upon the following issues:

1. To determine, in light of the Commission's findings in the matter of Radio Carrollton et al., 52 FCC 2d 1173 (1975), whether Faulkner Radio, Inc. possesses the requisite qualifications to be a broadcast licensee of this Commission.

2. To determine, in light of the arguments made with respect to the foregoing issue, whether a grant of the above-captioned applications for renewal of licenses would serve the public interest, convenience and necessity.

7. *It is further ordered,* That, to avail itself of the opportunity to be heard, Faulkner Radio, Inc., pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney, shall, within 20 days of the release of this Order, file with the Commission, in triplicate, a written notice stating an intention to appear on the date and time fixed for the Oral Argument and present arguments on the issues specified in this Order.

8. *It is further ordered,* That the Broadcast Bureau is made a party to the Oral Argument ordered herein and may participate to the extent it deems necessary to assure that the Commission is fully advised with respect to the foregoing issues.

9. *It is further ordered,* That Faulkner Radio, Inc. shall, within 30 days of the release of this Order, file with the Commission a written brief stating its position on the issues specified herein. The Broadcast Bureau may also file, within 30 days of the release of this Order, a written brief stating its position on the issues specified herein. Within 15 days after the deadline for filing initial briefs, both parties may file reply briefs.

10. *It is further ordered,* That, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding and the burden of proof with respect to all the issues herein shall be upon Faulkner Radio, Inc.

11. *It is further ordered,* That Faulkner Radio, Inc. shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the oral argument ordered herein within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of the notice as required by § 1.954(g) of the rules.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-28447 Filed 9-28-76;8:45 am]

PERSONAL USE RADIO ADVISORY COMMITTEE

Meetings

The next meeting of the Personal Use Radio Advisory Committee (PURAC) will be held Thursday, October 28, 1976 at 10 A.M. at the Commission's field office, 870 North Military Highway, Norfolk, Virginia 23502.

The agenda for this meeting, which will be to discuss the Committee's progress toward formulation of its Task area reports, will be as follows:

Chairman's Remarks and Introductions
Reports on Action Items
Reports by Task Coordinators
Other Business to be determined
Review of Action Item List
Adjournment

Tours of the FCC Field Engineer Training Facility will be offered beginning at 9 A.M. and during breaks throughout the day.

Meeting of PURAC are open to the public, subject to available meeting space. Observers desiring to make oral presentations at this meeting should coordinate their presentations with the Chairman. The following information should be submitted: Name, mailing address, and telephone number of person making the presentation, outline of material to be presented, duration of presentation, and audio/visual aids required. Written statements may also be submitted to the Committee and should be addressed to the Chairman, Mr. John B. Johnston, Personal Use Radio Advisory Committee, Room 5114, Federal Communications Commission, Washington, D.C. 20554. Individuals desiring further information concerning this meeting may call 634-6619.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-28448 Filed 9-28-76;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 Friday, October 15, 1976, at 9 a.m., Room 5041, FEA Headquarters, 12th and Pennsylvania Avenue, NW., Washington, D.C.

The Committee was established to provide the Administrator, FEA, with the diversified expertise possessed by a wide range of highly qualified individuals who have been extensively involved in identifying and evaluating the impact of proposed or existing energy policies on the consumer, the poor, the elderly and the handicapped person in rural and urban America, and planning, developing, and implementing policies and programs to remedy these problems.

The agenda for the meeting is as follows:

1. Pending FEA Policy Issues-Overview
2. Priorities Recommended by the Previous CA/SI Advisory Committee
3. Criteria for FEA Grant Program to Fund State Offices of Consumer Services
4. Winterization Program
5. Strategic Storage Program
6. Public Comment

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 Office.

Minutes of the meeting will be made available for public inspection in the Freedom of Information Office, Room 2107, Federal Energy Administration, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Issued at Washington, D.C. on September 24, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-28454 Filed 9-24-76;8:45 am]

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 Food Industry Advisory Committee will meet Wednesday, October 20, 1976, at 9 a.m., Conference Room B, Departmental Auditorium, Old Labor Building, Constitution Avenue between 12th and 14th Streets, NW., Washington, D.C.

The Committee was established to advise the Administrator, FEA, about food industry interests and problems as these relate to national energy conservation programs.

The agenda for the meeting is as follows:

1. Chairman's Report
2. Status of State Programs
3. Presentation of Energy Conservation Award
4. Subcommittee Reports
5. FEA Transportation Policy
6. Industrial Financial Incentives
7. Subcommittee Reports
8. General Discussion and Public Comment

Subcommittees may meet informally in Washington 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 Weeks, Director, Advisory Committee Management at (202) 961-7022.

The Committee 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 lease 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 Freedom of Information Office, Room 2107, Federal Energy Administration, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Issued at Washington, D.C. on September 24, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-28452 Filed 9-24-76;12:50 pm]

FUEL OIL MARKETING 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 Fuel Oil Marketing Advisory Committee will meet Monday, October 18, 1976, at 9 a.m., Barbizon Plaza Hotel, East Gallery Room, 106 Central Park South, New York, N.Y.

The Committee was established to provide the Administrator, FEA, with expert and technical advice concerning the trade of selling fuel oil.

The agenda for the meeting is as follows:

1. FEA's Strategic Storage Plan: Impact on Heating Oil Supplies
2. Heating Oil Availability for the 1976-1977 Season
3. FEA Proposed Trigger Mechanism for Heating Oil Prices
4. New Business
5. Remarks From the Floor (10 minute rule)

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 Office.

Minutes of the meeting will be made available for public inspection in the Freedom of Information Office, Room 2107, Federal Energy Administration, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Issued at Washington, D.C. on September 24, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-28453 Filed 9-24-76;12:50 pm]

FEDERAL POWER COMMISSION

[Docket No. CP71-153]

CONSOLIDATED SYSTEM LNG CO.

Application To Amend

SEPTEMBER 22, 1976.

Take notice that on August 3, 1976,[1] Consolidated System LNG Company (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP71-153 an application to amend the Commission's Opinion No. 622 and order, issued June 28, 1972, in said docket (47 FPC 1624), as modified on rehearing by Opinion No. 622-A and order (48 FPC 723), pursuant to section 3 of the Natural Gas Act by deleting Ordering Paragraph (6) of Opinion No. 622-A or, alternatively, by increasing the ceiling on the price contained in such Paragraph (6) from 77.0 cents per million Btu's of LNG to no less than 124.0 cents per million Btu's delivered by El Paso Algeria Corporation (El Paso Algeria) to Applicant at Cove Point, Maryland, all as more fully set forth in the application to amend which is on file with the Commission and open to public inspection.

It is stated that Opinion No. 622, as modified, among other things, authorized Applicant to import liquefied natural gas (LNG) from Algeria to the United States and to construct and operate jointly with Columbia LNG Corporation (Columbia LNG) an LNG terminal and regasification plant at Cove Point, Maryland. It is indicated that the LNG would be sold to Applicant at a delivered price based on El Paso Algeria's cost of service and calculated in accordance with the formula contained in Applicant's LNG purchase contract with El Paso Algeria and that notwithstanding its approval of the contract formula, the Commission concluded that it was necessary to maintain control over the price principally because of the uncertainty surrounding the estimates of the costs related to the construction and operation of the cryogenic tanker fleet.

Applicant asserts that Opinion No. 622-A makes it clear that the 77.0-cent ceiling price imposed was based on estimates of the cost of delivering LNG to Cove Point during the year of first deliveries and that the Commission was well aware of the possibility that costs actually experienced upon the commencement of deliveries could vary widely from the estimates presented. It is said that the imposition of the ceiling prices stemmed largely from the uncertainty surrounding the estimates of the cost of constructing and operating the cryogenic tanker fleet submitted almost five years ago. Applicant asserts that the passage of time has virtually eliminated this uncertainty and the fleet costs are now known to a high degree of certainty and that 95 percent of El Paso Algeria's capital costs are now known and the initial operating costs can now be esitmated with a higher degree of accuracy. Accordingly, Applicant alleges that in view of this and of the fact that the pricing formula limits operating costs to the recovery of actual expenditures reasonably and prudently incurred, Ordering Paragraph (6) should be deleted, or, alternatively, since the evidence demonstrates that the cost of LNG delivered to Cove Point would far exceed the 77.0-cent ceiling, the ceiling price for LNG delivered to Cove Point be increased to at least 124.0 cents per million Btu's in order to permit the recovery of actual costs, reasonably and prudently incurred.

Any person desiring to be heard or to make any protest with reference to said application to amend should on or before October 14, 1976, filed with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28409 Filed 9-28-76;8:45 am]

[Docket Nos. CP75-96, etc.]

EL PASO ALASKA CO. ET AL.

Order Granting Motion To Consolidate, Setting Expanded Comparative Hearings, Establishing Prehearing Conference, Granting Interventions, and Deferring the Determination of the Sufficiency of Applications and the Establishment of Certain Evidentiary and Administrative Procedures; Correction

AUGUST 3, 1976.

El Paso Alaska Company, Docket No. CP75-96; Western LNG Terminal Company, Docket No. CP75-83-1; Alaskan Arctic Gas Pipeline Company, Docket Nos. CP74-239, CP74-240; Pacific Gas Transmission Company, Docket Nos. CP74-241, CP74-242, CP71-182; Northern Border Pipeline, Docket Nos. CP74-290, CP74-291; Alcan Pipeline Company, Docket Nos. CP76-433, CP76-434; Northwest Pipeline Corporation, Docket Nos. CP76-435, CP76-436, CP76-437.

In FR Doc. 76-22268 appearing at page 32258 of the issue of Monday, August 2, 1976, make the following changes:

1. On page 32261, Footnote 9, line 2 should read: "Foothills, Westcoast, Alberta Gas Trunk Line Co. Ltd. and Alberta Gas Trunk Line (Canada) Ltd. seek leave to intervene".

2. On page 32261, 6th full paragraph, add Northwest Natural Gas Company to list of petitions to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-28399 Filed 9-28-76;8:45 am]

[Docket No. CP70-289]

INTER-CITY MINNESOTA PIPELINES LTD., INC.

Petition To Amend

SEPTEMBER 22, 1976.

Take notice that on September 7, 1976, Inter-City Minnesota Pipeline Ltd., Inc., (Petitioner), 1500 Richardson Building, 1 Lombard Place, Winnipeg 2, Manitoba, Canada, filed in Docket No. CP70-289, pursuant to Section 3 of the Natural Gas Act, a petition to amend the Commission's orders issued in said docket authorizing the importation and exportation of natural gas between Canada and the United States so as to reflect the new border export price ordered by the National Energy Board of Canada (NEB), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The petition indicates that by order of August 10, 1970, ICG Transmission Limited (Transmission) was authorized, among other things, to import into the United States up to 38,000 Mcf of gas per day from Canada through facilities at the international border near Sprague, Manitoba; to export to Canada up to 36,366 Mcf per day of this gas near Baudette, Minnesota; and to reimport up to 22,023 Mcf per day of this gas at International Falls, Minnesota. Further, it is indicated that by order issued September 26, 1976, Petitioner was substituted for Transmission as holder of the import-export authorizations in the subject docket and was authorized to increase the quantities of gas imported and exported.

Petitioner states that all natural gas imported and exported under the subject authorizations is purchased from Transmission pursuant to an agreement, dated April 8, 1974, as amended most recently by agreement, dated August 12, 1976. It is indicated that the latter agreement, among other things, provides for the higher border costs ordered by the NEB. Petitioner states that on June 10, 1976, the NEB established a new border export price to be charged by Transmission of $1.80 per million Btu's (Canadian) effective September 10, 1976, and $1.94

[1] The application was tendered for filing August 3, 1976; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 9, 1976. Thus, filing was not completed until the latter date.

per million Btu's (Canadian) effective January 1, 1977. Accordingly, Petitioner requests that the instant import authorizations be amended to authorize the continued importation of natural gas at the increased prices. Petitioner states that should the requested authorization not be granted, it would be faced with the termination of imports from its sole supplier, Transmission.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 12, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28401 Filed 9-28-76;8:45 am]

[Docket No. CP76-518]

MICHIGAN WISCONSIN PIPE LINE CO.

Application

SEPTEMBER 22, 1976.

Take notice that on September 9, 1976, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 43226, filed in Docket No. CP76-518 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compressor facilities to maintain the receipt of natural gas supplies from certain wells within the Hog Bayou Field, East Cameron Area Block 1, offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant indicates that by a gas sales contract dated March 5, 1965, Phillips Petroleum Company (Phillips) and Kerr-McGee Corporation (Kerr-McGee) each committed to American Louisiana Pipe Line Company [1] their gas reserves underlying the lands and leaseholds located in the Hog Bayou Field, Cameron Parish, Louisiana. It is said that the contract provides that Phillips and Kerr-McGee would deliver the gas at a pressure sufficient to enter Applicant's system at the designated delivery point, but not in excess of 1100 psig, and further that in the event the pressure of any well declines below the required delivery pressure, either Applicant or Phillips and Kerr-McGee may, but are not required to, install compressor facilities and if neither Phillips and Kerr-McGee nor Applicant elects to install the necessary facilities, then Applicant would release the reserves attributable thereto. Phillips has advised Applicant, it is indicated, that by early 1977 the pressure attributable to certain wells producing primarily from Liebusella nonassociated gas reservoirs of the Hog Bayou Field will have declined to approximately 560 psia. The application states that at 560 psia, delivery from the affected wells against the line pressure of Applicant's gathering facilities would be precluded, and to obviate the loss of the supplies from such wells, amounting to about 3,500,000 Mcf per year, Applicant has elected to install the necessary compressor facilities to maintain the delivery of these recoverable gas reserves.

Applicant proposes that about 1300 horsepower of compression to be owned by Applicant be installed and operated by Phillips on Phillips' production platform for the Hog Bayou Field. Applicant anticipates that the facilities would comprise two 655 horsepower compressor units at an estimated total cost of $957,890.00 to be financed with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 18, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own revew of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28406 Filed 9-28-76;8:45 am]

[1] American Louisiana Pipe Line Company was subsequently merged into Michigan Wisconsin Pipe Line Company on January 1, 1966.

[Docket Nos. CP76-255]

MICHIGAN WISCONSIN PIPE LINE CO. ET AL.

Order Consolidating Proceedings, Issuing Temporary Certificates, Granting Interventions, Scheduling Formal Hearing and Establishing Procedures; Correction

SEPTEMBER 8, 1976.

Michigan Wisconsin Pipe Line Company, Docket No. CP76-255; Michigan Consolidated Gas Company, CP76-254; Northern Natural Gas Company, CP76-271; Natural Gas Pipeline Company of America, CP76-325; Natural Gas Pipeline Company of America, CP76-353.

In FR Doc. 76-26869, published in the FEDERAL REGISTER on September 14, 1976, 41 FR (39081), make the following changes:

1. On page 39084, line D, change "September 8, 1976" to "October 15, 1976".
2. On page 39084, line E, change "September 22, 1976" to "October 29, 1976".
3. On page 39084, line F, change "October 6, 1976" to "November 11, 1976".
4. One page 39084, line G, change "November 4, 1976" to "December 7, 1976".

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-28398 Filed 9-28-76;8:45 am]

[Docket No. RM75-14]

NATIONAL RATES FOR JURISDICTIONAL SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE ON OR AFTER JANUARY 1, 1973, FOR PERIOD JANUARY 1, 1975 TO DECEMBER 31, 1976

Order Modifying Opinion No. 770

SEPTEMBER 22, 1976.

Ordering Paragraph D of Opinion No. 770 provided that a jurisdictional pipeline having a purchased gas adjustment (PGA) clause on file with the Commission could make a one-time PGA filing to track the increased rates that would have to be paid producers as a result of the action in Opinion No. 770. As to any Opinion No. 770 rate increase filed on or before August 26, 1976, a pipeline could track this increase by filing before September 27, 1976 for the PGA allowance to be effective October 27, 1976. In addition, because of the time delay in a filing 30 days after the producers, the Commission would permit a surcharge to be added to the special PGA filing to enable recovery of costs incurred prior to the adjustment in rates.

On August 27, 1976 Southern Natural Gas Company (Southern Natural) filed a petition for expedited declaratory order to modify Ordering Paragraph D to allow Southern Natural to collect the surcharge over an eight month period, October 27, 1976 to June 30, 1977, plus nine percent carrying charge. Southern Natural asserts that since its normal semi-annual PGA filing is January 1, 1977, the Commission proposed plan would require Southern Natural to recoup three months of deferred increases over a two month period (November-December). The result of this revision, according to South-

ern Natural, would be to reduce the surcharge impact from 30 cents to 8 cents and for the total Southern Natural filing from 51 cents to 28 cents.

In response to the Southern Natural petition, Union Gas Company, Polaris Corporation, City of Louisville, Georgia, Town of Steele Gas Board, Steele, Alabama, Cullman-Jefferson Counties Gas District, Cullman, Alabama, Water and Gas Board, Town of Hokes Bluff, Alabama, Gas Board of the City of Boaz, Boaz, Alabama, the Utilities Board of the Town of Camp Hill, Alabama, and Water Supply and Gas Board of Dadeville, Alabama, submitted answers in support. Caroline Pipeline Company and Georgia Municipal Association submitted statements supporting the revision in time for the PGA filing, but contended that the eight month period suggested by Southern Natural was arbitrary and discriminatory, and suggested that a twelve month period, January 1, 1977 to December 31, 1977, be utilized instead. Several additional parties have also submitted responses to the Southern Natural petition [1] that point out that low load factor and interruptible customers would be unfairly treated by the Commission proposal in Ordering Paragraph D of Opinion No. 770.

Parties in opposition to the Southern Natural proposal argue that any method of recovery based on a "per Mcf" surcharge spread over any period other than July 27–October 27, 1976 would also result in discriminatory treatment because end-users that took little gas during the July to October period would be required to pay more than their share of the increase. The alternative suggested is a one time lump sum surcharge for the first regular billing date after October 27, 1976 to cover the period between July 27 and October 27, 1976.

On September 7, 1976 United Gas Pipe Line Company (United) and on September 10, 1976 Sea Robin Company (Sea Robin) filed separate but identical proposals that Ordering Paragraph D be modified to permit spreading the Opinion No. 770 increases over a period from October 27, 1976 to June 30, 1976, which is the date of the respective pipelines' next PGA filing, plus a nine percent carrying charge.

The problem raised by the petitions of Southern Natural, United, and Sea Robin is common to over twenty-seven pipeline companies whose PGA clauses provide for an effective date of January 1, 1977. By requiring the pipelines' customers during November and December to pay for gas purchased and consumed between July and the end of October, low load factor and interruptible customers who do not or can not buy in the summer will be required, as winter-time consumers, to pay for gas purchased for the benefit of others. The most equitable way to deal with this difficulty is to spread out the Opinion No. 770 surcharge over a twelve month period.[2]

We recognize that in a curtailment situation different consumers buy gas during the winter and summer heating seasons. Necessarily, when a producer rate increase goes into effect during one season and the pipeline's cost recovery takes place in another season, some inequity results, but the best way to balance this effect over the long run is by spreading increases over a sufficiently long period so that all consumers pay part of the increase. This is how the PGA clause operates and it represents the fairest way we have found to deal with this matter. For this reason we adopt the Southern Natural proposal to increase the time during which the surcharge will be effective, but we modify the petitioner's suggested eight months to twelve months for the reason that the longer period is more equitable to all concerned.

A pipeline filing under Ordering Paragraph D of Opinion No. 770 will have the option of collecting the surcharge for the twelve month period commencing October 27, 1976, with a filing therefore no later than September 27, 1976, or during the pipeline's normal PGA filing period. We believe this modification of Opinion No. 770 serves to prevent discriminatory rate treatment by balancing the initial Opinion No. 770 rate increase among the whole range of the pipeline's customers.

Southern, United, and Sea Robin have proposed that spreading the surcharge over a longer period than the one set by the Commission in Opinion No. 770 requires that the pipelines add a nine percent carrying charge to the base surcharge.[3] The general question whether to permit carrying charges is presently pending before the Commission in a rulemaking proceeding,[4] but Southern correctly points out in its petition that the Opinion No. 770 situation is separate and distinct from the rulemaking. The problem for the pipelines arises because the Commission has attempted to compensate them because in Opinion No. 770 producers were permitted to collect the increased rates as of the date of issuance of the opinion. This special situation, plus the requirement to spread this surcharge over twelve months instead of the originally proposed two months, requires the imposition of the nine percent carrying charge.

Certain of the parties claim that the Commission's action in making producer rate increases and the pipeline PGA tracking thereof effective as of the date of issuance of Opinion No. 770 is retroactive ratemaking. These parties are simply incorrect in this assertion. The Commission addressed this point on rehearing in Opinion No. 699–H, stating that the issuance date should be the effective date in order to provide the rate of return and the overall rates found in the opinion to be just and reasonable.[5]

The Commission orders: (A) Opinion No. 770, particularly Ordering Paragraph D thereof, is modified consistent with this order. Any jurisdictional pipeline with a presently effective PGA clause may track producer rate increases filed before August 26, 1976 by electing to file for a surcharge to cover the costs incurred after July 27, 1976 as of September 27, 1976 or on the next date for that pipeline's regular PGA filing, with any such surcharge to be effective for a twelve month period commencing thirty days after the filing date and with a nine percent carrying charge during the duration of the surcharge.

(B) The foregoing action of the Commission in amending Opinion No. 770 does not constitute a grant or denial of any or all of the petitions for rehearing filed by any party herein, and is without prejudice to any contention made by any party in its petition or application for rehearing or reconsideration.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28396 Filed 9-28-76;8:45 am]

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[1] City of Perry, Georgia; City of Dallas, Georgia; Gas Board of the Town of Vincent, Alabama; City of Vicksburg, Mississippi; Fitzgerald Water, Light & Board Commission, Fitzgerald, Georgia; Utilities Commission of the City of Fort Valley, Georgia.

[2] We agree with Caroline Pipeline Company and the Georgia Municipal Association that the eight month period proposed by Southern is arbitrary and insufficient to fairly distribute the increased costs resulting from Opinion No. 770. Likewise, the United and Sea Robin suggestion of an October to June time frame will also be modified to twelve months.

[3] Section 154.102(c), as modified, Order No. 513–A, Order Amending Regulations Under The Federal Power Act And The Natural Gas Act, Docket No. RM74–18, —— FPC —— July 14, 1976.

[4] Notice of Proposed Rulemaking, Purchased Gas Cost Adjustment Provision In Natural Gas Pipeline Companies' FPC Gas Tariffs, Docket No. R–406, —— FPC —— May 10, 1976.

[5] Opinion No. 699–H, 52 FPC 1604, 1646 (1974).

[Docket No. CP76–511]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Application

SEPTEMBER 22, 1976.

Take notice that on September 1, 1976, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois, 60603, filed in Docket No. CP76–511 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the limited-term transportation and delivery of up to 50,000 Mcf per day of natural gas for United Gas Pipe Line Company (United), and the permanent retention and operation of facilities required to effectuate such transportation service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to transport for one year gas received from Producer's Gas Company (Producer) for United's account at two points of interconnection between Applicant's and Producer's systems, in section 18 of Dewey County and section 32 of Woodward County, Oklahoma. Applicant would transport on a best efforts basis and redeliver to United at an existing point of interconnection between United and Applicant in section 21 of Vermilion Parish, Louisiana, on a daily basis equivalent volumes of gas less the net volumes consumed in operation of the transportation service. Applicant proposes to charge 15.0 cents per Mcf for the transportation service.

The application indicates that a shortage in the gas supply on United's system has caused curtailment of deliveries to United's customers. In Docket No. CI76-597 filed on June 10, 1976, Producer requested authorization for a certificate for the sale of gas to United to help alleviate the impact on its customers of such curtailments. Applicant asserts that its proposal would permit United to receive these quantities of gas into its interstate pipeline system without the need to construct extensive facilities.

Applicant further proposes to retain in place and operate emergency tap connections in Dewey and Woodward Counties, Oklahoma, constructed in 1975, for the receipt of emergency gas purchased by Transcontinental Gas Pipe Line Company from Producer and a 10-inch measuring facility later constructed at the Dewey County emergency point. The total cost of these facilities is shown to be $24,950, which was financed from funds on hand.

Applicant asserts that these facilities were constructed to assist various interstate pipeline companies to help alleviate the shortage of natural gas on their systems and reduce the impact of curtailment on their customers and that there is a continuing need for the operation of these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28407 Filed 9-28-76;8:45 am]

[Docket No. CP71-32]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Petition To Amend

SEPTEMBER 22, 1976.

Take notice that on September 7, 1976, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois, 60603, filed in Docket No. CP71-32 a petition to amend the order of November 25, 1970, issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act, by which petition Petitioner requests authorization to continue to operate certain gas transmission facilities owned by The Peoples Gas Light and Coke Company (Peoples), an affiliate of Petitioner, and to revise the terms of the lease agreement dated July 16, 1970, as amended April 20, 1976, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that under the lease agreement petitioner operates the gas mains, the gas regulating facilities, the gas metering facilities, and all appurtenances that provide a direct interconnection between the Calumet and Crawford Stations of Peoples in the City of Chicago and the gas transmission mains of Petitioner which terminate at the south and southwest city limits of the city. The petition proposes that the annual rental for the facilities be revised so as to compensate adequately Peoples for the use of the facilities. It is stated that the current return to Peoples is fixed at 8 percent and that the proposed return would equal the depreciated original cost of the leased facilities as of December 31, of the year preceding payment, multiplied by the most recent rate of return allowed Peoples by the Illinois Commerce Commission. The petition indicates that the yearly adjustment made for the ratio of long-term debt to total proprietary capital plus long-term debt would be adjusted to reflect the ratio in Peoples' most recent rate determination, as follows:

a. By computing the theoretical long-term debt applicable to the leased facilities by using the ratio of long-term debt to total proprietary capital plus long-term debt of Peoples, as reflected in Peoples' most recent rate determination relating thereto, and multiplying the depreciated original cost of the leased facilities as of December 31, of the year preceding payment by said ratio; and

b. By computing the net income after federal income taxes by multiplying the product determined in (a) above by the cost of long-term debt as reflected in Peoples' most recent rate determination relating thereto, to determine an estimated annual amount of interest expense applicable to the theoretical long-term debt applicable to the leased facilities and deducting such amount from the amount of return.

The petition shows that the annual rental for 1976 under the proposed Amendment would be $552,504, a rate of return of 8½ percent, representing an increase of $32,280 over the $520,224 annual rental for 1975.

It is stated that the proposed Amendment would be for a term of one year from its effective date of January 1, 1976, and from month to month thereafter until terminated by either party on 30 days' written notice.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 14, 1976, file with the Federal Power Commission, Washington, DC 20426 a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28403 Filed 9-28-76;8:45 am]

[Docket No. CP76-515]

NORTHERN NATURAL GAS CO.

Application

SEPTEMBER 22, 1976.

Take notice that on September 7, 1976, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP76-515 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Great Lakes Gas Transmission Company (Great Lakes), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Applicant has received authority to exchange gas, on a year to year basis, with Great Lakes pursuant to the exchange agreement dated July 15, 1972, at Docket Nos. CP73-29 and CP75-237. Under the terms of an amendment to said agreement in the instant docket, Applicant proposes that Great Lakes would deliver to Applicant, on a best ef-

forts basis, during the period April through October, such daily volumes of gas as Great Lakes has available for exchange, and that during the period November through March Great Lakes would deliver to Applicant not less than 25,000 Mcf per day of gas. It is stated that Great Lakes would deliver the gas to Applicant through existing points of interconnection near Carlton and Grand Rapids, Minnesota, and that Applicant would redeliver equivalent volumes of gas to Great Lakes, in whole or in part, at either or both of the following existing interconnections: (1) Wakefield, Michigan or (2) to Michigan Wisconsin Pipeline Company, for the account of Great Lakes, at Janesville, Wisconsin. The application states that the proposed exchange would continue until cancelled by any party.

The application indicates that the proposed exchange is on a gas for gas basis and there will be no monetary consideration given by any party.

It is asserted that the gas exchange with Great Lakes as proposed would provide additional operating flexibility on Northern's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 12, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28404 Filed 9-28-76;8:45 am]

[Docket No. CP76-513]

TEXAS GAS TRANSMISSION CORP.

Application

SEPTEMBER 22, 1976.

Take notice that on September 7, 1976, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP 76-513 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continuation of service to 14 existing wholesale customers of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application requests authorization to continue service to the following customers:

Customer	Contract demand thousand cubic feet at 15.025 pounds per square inch absolute	Quantity entitlement thousand cubic feet at 15.025 pounds per square inch absolute	
		Summer season Apr. 1 to Nov. 1	Winter season Nov. 1 to Apr. 1
Zone 1:			
Gas Utility District No. 3 of Grant Parish, La.	518	14,400	30,600
Greater Ouachita Water Co.	300	13,900	21,100
Town of Jena, La.	2,500	174,000	246,000
Zone SL:			
Evangeline Gas Co., Inc.	2,000	209,760	135,240
Farmers Gas Service, Inc.	500	25,900	9,100
Jeff Davis Gas Co., Inc.	100	4,650	850
Jennings Gas, Inc.	100	5,050	650
Lafourche Gas Corp.	500	40,150	69,850
Town of Mamou, La.	500	31,290	38,710
Mowata Gas Co.	400	15,440	4,560
Nezpique Gas System, Inc.	100	20,900	4,100
Richie Gas Co., Inc.	200	6,985	4,015
Roanoke Gas Co., Inc.	100	4,850	650
United Gas Inc. (now Entex, Inc.)	300	7,665	13,335

It is stated that Applicant has previously treated all of its customers listed above as intrastate and, therefore, not subject to the jurisdiction of the Federal Power Commission. It is also stated that on June 22, 1976, the Louisiana Public Service Commission (Louisiana Commission) advised Texas Gas to file its contract with the customers listed above with the Louisiana Commission and that the Louisiana Commission planned to exercise active rate jurisdiction over these sales. Further, the application indicates that as a result, Applicant undertook a review of the current jurisdictional status of these sales and, concluded that, since Federal Domain gas is now flowing into the Southern Louisiana system of Applicant, it now appears that such sales are subject to the jurisdiction of the Federal Power Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 14, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28400 Filed 9-28-76;8:45 am]

[Docket No. CP76-508]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

SEPTEMBER 22, 1976.

Take notice that on September 1, 1976, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76-508 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the construction and operation of a tap and the transportation of natural gas for The Timken Company (Timken), an industrial customer of United Cities Gas Company, North and South Carolina Divi-

sion (United Cities), a resale customer of Applicant, from a mutually agreeable point on Applicants main line in Jones County, Mississippi, to existing delivery points to United Cities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct a tap and flange connecting the gathering facilities of Robert Mosbacher (Mosbacher to Applicant's line in Jones County, for which Timken would reimburse Applicant for Timken's pro-rata share of the cost of the facilities, which cost is estimated to be $7,800. Applicant further proposes to transport for Timken for two years on an interruptible basis up to 1,100 Mcf of natural gas per day purchased from Mosbacher. It is stated that Mosbacher has agreed to sell an average daily volume of 550 Mcf of gas to be produced from the Calhoun Field, Jones County, Mississippi. It is shown that the gas would be purchased by Timken for $1.40 per Mcf at 15.025 psia from date of first delivery until January 1, 1977, $1.50 per Mcf through January 1, 1978, and $1.60 per Mcf through the termination of the contract.

Applicant proposes to charge 22 cents per Mcf at 14.7 psia for the transportation service. Applicant asserts that it would retain for compressor fuel and line loss make-up 3.8 percent of the transportation volumes.

It is stated that Timken, at its facility in Gaffney, South Carolina, produces tapered roller bearings for use in automobiles, agricultural implements, and various industrial equipment, and that all possible operations have been converted to the use of fuels other than natural gas.

The application states that since the volumes to be transported under this and any similar transportation arrangements with customers of the distributors, when added to any volumes being transported for the distributors themselves and the distribution customers' scheduled daily deliveries, shall not exceed the contract entitlement of the distributors from Applicant, there exists sufficient pipeline capacity to perform the service on a peak day, average day and annual basis.

The application further states the Applicant did not consider the subject natural gas supply to be available for purchase by it and did not attempt to purchase said gas because, at the time this transaction was consummated, the Commission has given no indication that it would authorize a sale to interstate pipelines at the price level reflected herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 8, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28405 Filed 9-28-76;8:45 am]

[Docket No. CP76-509]

TRANSWESTERN PIPELINE CO.

Application

SEPTEMBER 22, 1976.

Take notice that on September 1, 1976, Transwestern Pipeline Company (Applicant), PO Box 2521, Houston, Texas 77001, filed in Docket No. CP76-509 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Western Gas Interstate Company (Western), a wholly-owned affiliate of Southern Union Gas Company (Southern), for resale to Southern, an existing customer of Applicant, pursuant to the proposed Rate Schedule TS-1 and the construction and operation of a 4-inch tap and metering facility on Applicant's 8-inch Bell Lake Lateral in Lea County, New Mexico, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to provide a transportation service on an interruptible, best efforts basis, to use available capacity on Applicant's system, pursuant to a new rate schedule TS-1. It is shown that there is available capacity on Applicant's system as a result of the continuing gas shortage, and curtailment of deliveries to customers is projected to be 38.6 percent of the system's authorized delivery and design capacity. Applicant states that the charge for transportation service under the proposed rate schedule would equal Applicant's CDQ-2 and CDQ-3 commodity base tariff rate less Applicant's base average gas cost and fuel cost for deliveries east of Roswell, New Mexico, and for deliveries west of Roswell, New Mexico, would equal the CDQ-1 commodity rate base tariff rate less Applicant's base average gas cost and fuel cost, and that the dekatherms received for transportation would be reduced 4 percent to offset quantities used by Applicant in the performance of the transportation service.

The application indicates that Western has secured gas supplies at the Antelope Ridge Plant in Lea County, New Mexico, and that Applicant has agreed to deliver up to 6,000 dth of gas from a point on Applicant's Bell Lake Lateral to Southern for Western's account at an existing interconnection on Applicant's Panhandle Lateral in Curry County, New Mexico, where the gas would be resold to Southern's customers.

Applicant further proposes to construct and operate a 4-inch tap and meter run required to take the gas supply into Applicant's 8-inch Bell Lake Lateral at a cost of $25,000 to be financed from Applicant's funds, for which Applicant would be reimbursed by Western pursuant to Rate Schedule TS-1.

The application asserts that the filing of Rate Schedule TS-1 would enable Applicant to respond to requests by its existing customers subject to Commission approval to ultilize available capacity to transport gas which they, through their own negotiations and efforts, have been able to secure, and that such transportation would avoid costly and time-consuming duplication of extensive pipeline facilities. Further, the application maintains that there would be no burden on Applicant's other customers through implementation of the proposed service, and that redelivery of the Western volumes to its affiliate Southern would result in an immediate reduction in curtailment.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in acocrdance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdictions conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further

notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28408 Filed 9-28-76;8:45 am]

[Docket No. CP76-516]

WESTERN GAS INTERSTATE CO.

Application

SEPTEMBER 22, 1976.

Take notice that on September 7, 1976, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP76-516 an application pursuant to section 7(c) of the Natural Gas Act authorizing the construction and operation of facilities necessary for transportation of natural gas and the delivery of the gas for resale to Gas Company of New Mexico (GCNM) through assignment to the Applicant of the interest as buyer of Southern Union Company (Southern), Applicant's parent, under a gas purchase contract with Shell Oil Company (Shell) and Continental Oil Company (Conoco), and authorizing the acquisition and operation of existing gas receipt, measuring, and delivery facilities at the point of redelivery, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 3.8 miles of 6-inch pipeline and appurtenant facilities for the transportation of up to 8,000 Mcf of gas per day from the Antelope Ridge Plant of Shell in Lea County, New Mexico to the Bell Lake Plant of Transwestern Pipeline Company (Transwestern) in Lea County, New Mexico. It is stated that Applicant would deliver the gas to Transwestern for further transportation and redelivery to Applicant near the town of Portales, Curry County, New Mexico.

Applicant further proposes to sell the gas to GCNM for resale at a delivery point on GCNM's distribution system serving Clovis, Portales, Texico, and Tucumcari, New Mexico and to transport the gas through the proposed pipeline to Transwestern's existing lines for redelivery to Applicant near the town of Portales, New Mexico. Applicant also seeks authority to acquire from GCNM the existing receipt, measuring, and delivery facilities located at the outlet side of Transwestern's measuring station No. 0008 in Curry County, New Mexico.

It is alleged that GCNM, a division of Southern and the distributor for the areas of Clovis, Portales, Texico, and Tucumcari, New Mexico, cannot meet the requirements of its customers recently attached before the present moratorium of new attachments was imposed unless it obtains supplemental gas supplies.

The application states that the total cost to the applicant of the facilities to be constructed and acquired would be $408,668 which Applicant would finance from cash-on-hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 14, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28402 Filed 9-28-76;8:45 am]

FINANCE-TECHNICAL ADVISORY COMMITTEE

Meeting

Conference Room 5200, Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, October 14, 1976, 9:30 A.M.

Presiding: Mr. Jack Adelman, FPC Coordinating Representative & Secretary, Federal Power Commission.

1. Call to Order and Introductory Remarks—Mr. Adelman
2. Remarks by Chairman—Mr. Edward Symonds
3. Review of Draft Report
4. Selection of Next Meeting Date
5. Other Business
6. Adjournment—Mr. Adelman

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements if in written form, may be filed before or after the meeting, or if oral at the time and in the manner permitted by the Committee.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76-28543 Filed 9-28-76;8:45 am]

[Docket No. CP75-287]

NORTHWEST PIPELINE CORP.

Petition To Amend

SEPTEMBER 20, 1976.

Take notice that on September 3, 1976, Northwest Pipeline Corporation (Petitioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP75-287 a petition to amend the order of September 1, 1976, issuing a temporary certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act, by which petition Petitioner requests authorization to revise the allocation of the daily and seasonal delivery obligations under its FPC Gas Rate Schedule SGS-1 authorized by the order of September 1, 1976, which reallocation will result in most SGS-1 customers receiving an increase in storage service over that authorized for the 1975-76 heating season, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Petitioner states that the order of September 1, 1976, authorized:

1. An increase in the seasonal quantity of natural gas which Northwest is authorized to sell and deliver pursuant to Northwest's FPC Gas Rate Schedule SGS-1 from the then presently authorized quantity of 9,300,000 Mcf to 10,100,000 Mcf.

2. An extension in the withdrawal season from October 15, of each year to the next succeeding April 15, to a period commencing on October 1, of each year to the next succeeding April 30, of each year.

3. The injection of volumes of natural gas during the withdrawal season.

4. The sale and delivery of the increased seasonal quantities and corresponding reallocation of the seasonal volumes and peak day volumes.

The daily and seasonal allocations as authorized in the order of September 1, 1976, were as follows:

Allocation for the 1976–77 heating season and thereafter as authorized on Sept. 1, 1976

	Daily quantity		Total
	Firm	Best efforts	
California-Pacific Utilities Co.	2,987	718	3,705
Cascade Natural Gas Co.	18,886	4,522	23,408
Intermountain Gas Co.	15,771	3,775	19,546
Northwest Natural Gas Co.	26,210	6,273	32,483
Peoples Natural Gas, Division of Northern Natural Gas Co.	514	120	634
Southwest Gas Corp.	11,600	2,775	14,375
Washington Natural Gas Co. and Washington Water Power Co., jointly	224,032	53,587	277,619
Total	300,000	71,770	371,770

	Seasonal quantity
California-Pacific Utilities Co.	100,552
Cascade Natural Gas Co.	635,820
Intermountain Gas Co.	530,970
Northwest Natural Gas Co.	882,380
Peoples Natural Gas, Division of Northern Natural Gas Co.	17,313
Southwest Gas Corp.	390,533
Washington Natural Gas Co. and Washington Water Power Co., jointly	7,542,423
Total	10,100,000

The proposed revision of the allocation of the firm contract demand and seasonal quantities for the 1976–77 heating season are as follows:

Revised allocation for the 1976–77 heating season and thereafter

	Daily quantity		Total
	Firm	Best efforts	
California-Pacific Utilities Co.	4,231	718	4,949
Cascade Natural Gas Co.	26,800	4,522	31,322
Intermountain Gas Co.	18,559	3,775	22,334
Northwest Natural Gas Co.	38,296	6,273	44,569
Peoples Natural Gas, Division of Northern Natural Gas Co.	514	120	634
Southwest Gas Corp.	11,600	2,775	41,375
Washington Natural Gas Co. and Washington Water Power Co., jointly	200,000	53,587	253,587
Total	300,000	71,770	371,770

	Seasonal quantity
California-Pacific Utilities Co.	136,055
Cascade Natural Gas Co.	860,730
Intermountain Gas Co.	689,917
Northwest Natural Gas Co.	1,228,571
Peoples Natural Gas, Division of Northern Natural Gas Co.	17,313
Southwest Gas Corp.	390,533
Washington Natural Gas Co. and Washington Water Power Co., jointly	6,776,872
Total	10,100,000

It is stated that those of Petitioner's customers purchasing gas pursuant to Petitioner's F.P.C. Gas Rate Schedule SGS–1 have requested that the allocation of the peak day and seasonal quantities originally requested be revised as above. The petition shows that the allocation authorized by the order of September 1, 1976, granting a temporary certificate of public convenience and necessity resulted in a reduction in firm service to most of Petitioner's customers with concurrent increases solely for Southwest Gas Corporation, Washington Natural Gas Company, and the Washington Water Power Company. Further, the petition shows that Petitioner seeks the amendment to assure that Petitioner can meet the customers' peak day requests for SGS.

Petitioner indicates that the agreement betwen all parties for the revised allocation is evidenced by the executed service agreements between Petitioner and those of its customers purchasing SGS–1 service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 13, 1976, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.76–28174 Filed 9–27–76;8:45 am]

FEDERAL RESERVE SYSTEM

[H.2, 1976 No. 37]

ACTIONS OF BOARD

Applications and Reports

Actions of the Board; applications and reports received during the week ending September 11, 1976.

ACTIONS OF THE BOARD

Stockmen's Bank, Gillette, Wyoming, extension of time to December 31, 1976, within which to issue subordinated capital notes.

National Bank of Northampton, Nassawadox, Virginia, proposed merger with United Virginia Bank/Seaboard National, Norfolk, Virginia; report to the Comptroller of the Currency on competitive factors.

Illinois National Bancorp, Inc., Springfield, Illinois, extension of time to December 9, 1976, within which to acquire 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to The Illinois National Bank of Springfield, Illinois.[1]

Republic of Texas Corporation, Dallas, Texas, extension of time to October 21, 1976, within which to consummate the acquisition of First Bank & Trust, Lufkin, Texas and Diboll State Bank, Diboll, Texas.[1]

SYB Corporation, Oklahoma City, Oklahoma, extension of time to October 8, 1976, within which to consummate the acquisition of The Stock Yards Bank, Oklahoma City, Oklahoma.[1]

SunBank of South Dakota, Sioux Falls, South Dakota, to make an investment in bank premises.[1]

Farmers State Bank of Breckenridge, Breckenridge, Michigan, application to exercise limited trust powers.[1]

First Virginia Bank of Tidewater, Norfolk, Virginia, proposed merger with First Virginia Bank of the Peninsula, Poquoson, Virginia; report to the Federal Deposit Insurance Corporation on competitive factors.[1]

Mississippi Bank, Jackson, Mississippi, proposed merger with Truckers Exchange Bank, Crystal Springs, Mississippi; report to the Federal Deposit Insurance Corporation on competitive factors.[1]

National Bank of Ludington, Ludington, Michigan, proposed merger with NBL National Bank, Ludington, Michigan; report to the Comptroller of the Currency on competitive factors.[1]

NOTE.—The H.2 release is now published in the FEDERAL REGISTER. It will continue to be sent, upon request, to anyone desiring a copy.

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Platte Valley Bank, Brighton, Colorado. Branch to be established at 12th and Bridge Street, Brighton.[2]

To Become a Member of the Federal Reserve System Pursuant to Section 9 of the Federal Reserve Act.

[1] Application processed on behalf of the Board of Governors under delegated authority.

[2] Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

APPROVED

Bank of Marin, San Rafael, California.[3]
Tracey-Collins Bank and Trust Company, Salt Lake City, Utah.[3]

To Merger Pursuant to Section 18(c) of the Federal Deposit Insurance Act.

APPROVED

Bankers Trust Company, New York, New York, to merge with Bankers Trust of Suffolk, National Association, Patchogue, New York.
Bankers Trust Company of Western New York, Jamestown, New York, to merge with Bankers Trust Company of Rochester, Rochester, New York.

To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

APPROVED

Morgan Guaranty Trust Company of New York. Branches to be established in Italy, one each in Milan and Rome.
Bank of America N T and S A. Branch—Island of Jersey in the Channel Islands.

International Investments and Other Actions Pursuant to Sections 25 and 25(a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

APPROVED

Bamerical International Financial Corporation. Investment—additional in Bankamerica Finance, Limited, Reading, England.
Bamerical International Financial Corporation. Investment—in a *de novo* finance company in Paraguay.

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

WITHDRAWN

First Hanover Park Corporation, Chicago, Illinois, for approval to acquire 80.03 per cent of the voting shares of First State Bank & Trust Company of Hanover Park, Hanover Park, Illinois.

APPROVED

FAM Financial Incorporated, Macksville, Kansas, for approval to acquire 80 per cent or more of the voting shares of The Farmers and Merchants State Bank, Macksville, Kansas.
Platte Valley Bancorp, Inc., Brighton, Colorado, for approval to acquire 80 per cent or more of the voting shares of Platte Valley Bank, Brighton, Colorado and Platte Valley Bank of Weld County, Frederick, Colorado.

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

WITHDRAWN

Cullen Bankers, Inc., Houston Texas, for approval to acquire 100 per cent (less directors' qualifying shares) of the voting shares of San Felipe National Bank, Houston, Texas.

APPROVED

IB&T Corp., Pocatello, Idaho, for approval to acquire 80 per cent or more of the voting shares of First Bank of Troy, Troy, Idaho.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

RETURNED

First Chicago Corporation, Chicago, Illinois, notification of intent to engage in *de novo* activities (making or acquiring, for its own account or for the account of others, secured or unsecured loans and other extensions of credit such as would be made by a finance company which activities include making consumer installment loans, purchasing consumer installment sales contracts, and making loans to small businesses) in Arlington Heights, Calumet City, Cicero, Deerfield, and Naperville, Illinois, through its subsidiary, First Chicago Credit Corporation. This notification has been terminated as a Y-4 application will be submitted (7/13/76).[3]

WITHDRAWN

Popular Bancshares Corp., Miami, Florida, notification of intent to engage in *de novo* activities (placement of casualty insurance for individuals and corporations with insurance companies qualified to do business in the State of Florida) in Miami, Florida, through a subsidiary, Popular Insurance Agency, Inc.
Prague Company, Prague, Nebraska, notification of intent to engage in *de novo* activities (acting as insurance agent or broker for general lines of insurance including credit related and casualty insurance) at The Bank of Prague, Prague, Nebraska (9/10/76).[3]

DELAYED

Chemical New York Corporation, New York, New York, notification of intent to engage in *de novo* activities (the origination and sale of mortgage loans on residential, commercial, and industrial real estate and the servicing of mortgage loans owned by The Galbreath Mortgage Company and owned by others) at 1700 Sunset Boulevard, West Columbia, South Carolina, through its subsidiary, The Galbreath Mortgage Company (9/8/76).[3]
Citicorp, New York, New York, notification of intent to engage in *de novo* activities (purchasing and servicing for its own account consumer installment sales finance contracts; and will act as broker for the sale of consumer credit related life/accident and health insurance and consumer credit related property and casualty insurance on purchased consumer installment sales finance contracts, said insurance will only be offered when such transactions are the equivalent of direct extensions of consumer credit by the subsidiary; if the proposal is effected, the subsidiary will offer to sell insurance as follows: group credit life/accident and health insurance to cover the outstanding balances on consumer installment sales finance contracts to obligators, singly or jointly, with their spouses or co-signers in the case of life coverage in the event of death, or, make the contractual monthly payments on consumer installment sales finance transactions in the event of the obligators' disability to the extent permissible under applicable State insurance laws and regulations; and individual casualty insurance on personal property subject to security agreements; further, in regard to the sale of credit related insurance, the subsidiary will not act as a general insurance agency) at 3000 Lynch Extension, Jackson, Mississippi, through its subsidiary, Nationwide, Financial Corporation (9/9/76).[3]
Citicorp, New York, New York, notification of intent to engage in *de novo* activities (consumer home equity lending secured by real estate, making loans for the account of others such as one-to-four family unit mortgage loans; and in regard to the new activities acting as agent or broker for the sale of credit related life/accident and health insurance and credit related property and casualty insurance; if these proposals are effected the establishment will offer to sell insurance as follows: consumer credit related life/accident and health, decreasing or level (in the case of single payment loans) term life insurance to cover the outstanding balances to consumer credit transactions singly or jointly, with their spouses or co-signors in the case of life coverage in the event of death, or, to make the contractual monthly payments on the consumer credit transactions in the event of the obligator disability to the extent permissible under applicable State insurance laws and regulations: property and casualty insurance coverage on property subject to security agreements and to include liability coverage in home or automobile owner "package" policies where such is the general practice) at 301 Grand Avenue, Laramie, Wyoming; Rock Springs Plaza, Dewer Drive, Rock Springs, Wyoming; 415 West Cedar Street, Rawlins, Wyoming; 227 North Main, Sheridan, Wyoming; 307 West 18th Street, Cheyenne, Wyoming; 690 Main Street, Lander, Wyoming; Market Square, East Second Street, Casper, Wyoming (to be relocated from 261 S. Center Street, Casper, Wyoming) through its subsidiary, Nationwide Financial Services Corporation and its subsidiary, Nationwide Financial Corporation of Wyoming. (9/10/76).[3]

REACTIVATED

Southwest Bancshares, Inc., Houston, Texas, notification of intent to engage in *de novo* activities (originating loans as principal, orginating loans as agent, servicing loans for non-affiliated individuals, partnerships, and corporations; servicing loans for subsidiaries of Southwest Bancshares, Inc., and such other activities as may be incident to the business of a mortgage company) at 2901 West Loop South, Houston, Texas, through a subsidiary, Southwest Bancshares Mortgage Company (9/9/76).[3]

PERMITTED

Citicorp, New York, New York, notification of intent to engage in *de novo* activities (purchasing and servicing for its own account consumer installment sales finance contracts; and will act as broker for the sale of consumer credit related life/accident and health insurance and consumer credit related property and casualty insurance on purchased consumer installment sales finance contracts, said insurance will only be offered when such transactions are the equivalent of direct extensions of consumer credit by the subsidiary; if this proposal is effected, the subsidiary will offer to sell insurance as follows: group credit life/accident and health insurance to cover the outstanding balances on consumer installment sales finance contracts to obligators, singly or jointly, with their spouses or co-signers in the case of life coverage in the event of death, or, to make the contractual monthly payments on consumer installment sales finance transactions in the event of the obligators' disability to the extent permissible under applicable State insurance laws and regulations; and individual casualty insurance on personal property subject to security agreements; further, in regard to the sale of credit related insurance, the subsidiary will not act as a general insurance agency) at Mall View Office Park, 5313 50th Street, Building B, Suite 5, Lubbock, Texas, through its subsidiary, Nationwide Financial Corporation (9/4/76).[3]

[3] 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

APPROVED

Platte Valley Bancorp, Inc., Brighton, Colorado, for permission to retain its credit related insurance agency activities that currently are conducted through Platte Valley Insurance Agency, Frederick, Colorado.

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Villa Park Trust & Savings Bank, Villa Park, Illinois. Branch to be established at 27 West Park Boulevard, Villa Park.

Nassau Trust Company, Glen Cove, New York. Branch to be established on Main Street, Kings Park on the Northwest corner of the intersection of Main Street and Indian Head Road, (unincorporated area) Smithtown Township, Suffolk County.

Citizens Bank of New Haven, New Haven, Missouri. Branch to be established on Miller Street near Highway 100 in New Haven, Franklin County.

Bloomfield State Bank, Bloomfield, Indiana. Branch to be known as Shakamak to be established at 315 E. Main Street, Jasonville, Greene County.

To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

Manufacturers Hanover Trust Company. Branch—Hong Kong.

Ubaf Arab American Bank, New York. Branch—George Town, Grand Cayman, Cayman Islands.

To Organize or Invest in, a Corporation Doing Foreign Banking and Other Foreign Financing Pursuant to Section 25 or 25(a) of the Federal Reserve Act.

Morgan Guaranty Trust Company of New York. To establish an Edge Corporation to be known as, "Morgan Guaranty International Bank of Miami."

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

LubCo BancShares, Inc., Slaton, Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Citizens State Bank, Slaton, Texas.

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

The Marine Corporation, Milwaukee, Wisconsin, for approval to acquire 90 per cent or more of the voting shares of The Merchants National Bank of Watertown, Watertown, Wisconsin.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

Citicorp, New York, New York, notification of intent to engage in *de novo* activities (purchasing and servicing for its own account consumer installment sales finance contracts; and will act as broker for the sale of consumer credit related life/accident and health insurance and consumer credit related property and casualty insurance on purchased consumer installment sales finance contracts, said insurance will only be offered when such transactions are the equivalent of direct extensions of consumer credit by the subsidiary; if the proposal is effected, the subsidiary will offer to sell insurance as follows: group credit life/accident and health insurance to cover the outstanding balances on consumer installment sales finance contracts to obligators; singly or jointly, with their spouses or co-signers in the case of life coverage in the event of death, or, make the contractual monthly payments on consumer installment sales finance transactions in the event of the obligators' disability to the extent permissible under applicable State insurance laws and regulations; and individual casualty insurance on personal property subject to security agreements; further, in regard to the sale of credit related insurance, the subsidiary will not act as a general insurance agency) at 3000 Lynch Extension, Jackson, Mississippi, through its subsidiary, Nationwide Financial Corporation (9/7/76).[3]

Maryland National Corporation, Baltimore, Maryland, notification of intent to engage in *de novo* activities (engaging generally in the business of a mortgage broker and mortgage servicing firm, originating loans as agent for the borrower or the lender, servicing loans for affiliated or nonaffiliated individuals, partnerships, corporations, real estate, investment trusts, or others; and engaging in the sale as agent or broker of credit life, credit disability, mortgage redemption, and mortgage cancellation insurance in connection with mortgage transactions originated or serviced as above) at 10 Light Street, Baltimore, Maryland and 325 John Knox Road, Tallahassee, Florida, through its subsidiary, Maryland National Advisers, Inc. (9/7/76).[3]

NCNB Corporation, Charlotte, North Carolina, for approval to retain the shares of NCNB Financial Services, Inc., Charlotte, North Carolina.

Ancorp Bancshares, Inc., Chattanooga, Tennessee, notification of intent to engage in *de novo* activities (making and acquiring, for its own account and the account of others, loans and other extensions of credit such as would be made by a finance company; and acting as insurance agent or broker with respect to any insurance that is directly related to the extensions of credit by Ancorp Finance Company and is directly related to the providing of other financial services by Ancorp Finance Company), at Richland Park Shopping Center, Dayton, Tennessee, through a subsidiary, Ancorp Finance Company (9/10/76).[3]

Great American Corporation, Baton Rouge, Louisiana, notification of intent to engage in *de novo* activities (the organization of real estate and mortgage loans and such other business as is customarily engaged in by mortgage companies including the sale of credit life insurance, accident and health insurance, and property insurance for collateral supporting loans made by said subsidiary) at 2025 Mandeville-Covington Highway, Covington, Louisiana, through a subsidiary, Ambank Mortgage Company (9/10/76).[3]

Southeast Banking Corporation, Miami, Florida, notification of intent to engage in *de novo* activities (performing or carrying on any one or more of the functions or activities of a fiduciary, agency, or custodian nature) at 1007 South Federal Highway, Deerfield Beach, One Independent Drive, Jacksonville, and 200 Canal Street, New Smyrna Beach, all located in Florida, through a subsidiary, Southeast Banks Trust Company, Inc. (9/7/76).[3]

First Tennessee National Corporation, Memphis, Tennessee, notification of intent to engage in *de novo* activities (making or acquiring, for its own account, interest bearing and discount loans and other extensions of credit and offering through the direct insurer or the reinsurer insurance that that is directly related to an extension of credit by the company or its subsidiaries; the kinds of insurance offered will be reducing individual credit life or reducing joint spouse credit life insurance and credit disability insurance and credit property insurance covering collateral pledged for a loan or other extensions of credit) at 2711 North Fourteen Street, Ponca City, Oklahoma, through its wholly-owned subsidiary, Crown Finance Corporation (9/7/76).[3]

BancOklahoma Corp., Tulsa, Oklahoma, notification of intent to engage in *de novo* activities (to offer credit life and credit accident and health insurance on loans or extensions of credit made by BancOklahoma Service Corp. or its subsidiaries) at 321 South Boston, Tulsa, Oklahoma, through a subsidiary, BancOklahoma Service Corp. (9/7/76.)[3]

Liberty National Corporation, Oklahoma City, Oklahoma, notification of intent to engage in *de novo* activities (originating, selling, and servicing real estate mortgage loans on residential and commercial properties) at 1707 Cache Road, Lawton, Oklahoma, through a wholly-owned indirect subsidiary, Liberty Mortgage Company (9/7/76).[3]

Liberty National Corporation, Oklahoma City, Oklahoma, notification of intent to engage in *de novo* activities (originating real estate mortgage loans on residential and commercial properties) at 3801 N.W. 63rd Street, Oklahoma City, Oklahoma, through a wholly-owned indirect subsidiary, Liberty Mortgage Company (9/7/76).[3]

U.S. Bancorp, Portland, Oregon, notification of intent to engage in *de novo* activities (making, acquiring, and servicing of loans and other extensions of credit either secured or unsecured for its own account or for the account of others, including the making, originating, acquiring, purchasing, arranging for holding, warehousing and selling, for its own account and for the account of others, loans of all types and other extensions of credit for any person; and acting as insurance agent with regard to credit life and disability insurance, property and casualty insurance solely in connection with extensions of credit by U.S. Bancorp Mortgage Co.) at 10th and Main Streets, Boise, Idaho, through a subsidiary, U.S. Bancorp Mortgage Company (8/23/76).[3]

To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

Warner Communications Inc., New York, New York, notification of intent to acquire, through its subsidiary WCI Games Inc., the controlling shares of Atari, Inc. (9/7/76).[3]

REPORTS RECEIVED

Current Report Filed Pursuant to Section 13 of the Securities Exchange Act:

The Ohio Citizens Trust Company, Toledo, Ohio.

PETITIONS FOR RULEMAKING

None.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-28458 Filed 9-28-76;8:45 am]

BOATMEN'S BANCSHARES, INC.

Proposed Acquisition of Boatmen's Life Insurance Co.

Boatmen's Bancshares, Inc., St. Louis, Missouri, has applied, pursuant to Sec-

tion 4(c)(8) of the Bank Holding Company (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Boatmen's Life Insurance Company, Phoenix, Arizona. Notice of the application was published on July 24, 1976 in the St. Louis Post-Dispatch, a newspaper circulated in St. Louis, Missouri, and on July 24, 1976 in The Arizona Republic; a newspaper circulated in Phoenix, Arizona.

Applicant states that the proposed subsidiary would engage in the activity of underwriting, as reinsurer, credit life insurance and credit accident and health insurance directly related to extensions of credit by Applicant's subsidiary banks. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

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 October 21, 1976.

Board of Governors of the Federal Reserve System, September 20, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-28459 Filed 9-28-76;8:45 am]

C.I.T. FINANCIAL CORP.

Application for Approval To Acquire Assets of Guardian Commercial Corp.

C.I.T. Financial Corporation, New York, New York, a bank holding company within the meaning of the Bank Holding Company Act, applied for the Board's approval, under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to acquire substantially all of the assets of 27 subsidiary consumer finance offices of Guardian Commercial Corporation ("Guardian"), Roslyn Heights, New York. Consumer finance activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1)). By Order of August 27, 1976, the Board acted to approve the application for the reasons that are set forth in this Statement.

Applicant controls one bank, National Bank of North America ("Bank"). Bank, with total domestic deposits of $2.2 billion, representing 1.6 per cent of the total commercial bank deposits in the State, is a full-service commercial bank with 141 offices in the New York City metropolitan area and is the tenth largest bank in New York State.[1] Applicant has total assets of about $7 billion and engages in four principal lines of activity: business and consumer finance, banking, manufacturing and merchandising, and insurance.[2] Applicant, with approximately 1,000 consumer and business finance offices located throughout the United States, Puerto Rico and Canada, is one of the largest diversified finance companies in the United States. Business and consumer finance activities comprise approximately 50 per cent of Applicant's assets and 56 per cent of Applicant's net income.

Guardian, with total assets of approximately $36 million, is a subsidiary of First Jersey National Corporation ("FJNC"), Jersey City, New Jersey, a registered bank holding company, and engages through its three direct subsidiaries, Guardian Loan Company, Tilden Commercial Alliance, and Tilden Life Insurance, in consumer and sales financing, automobile and equipment lease financing, the sale of credit life and credit accident and health insurance in connection with extensions of credit, and the reinsuring of credit life and credit disability insurance. Applicant proposed to acquire approximately $12 million of Guardian's assets, representing substantially all of the assets relating to the consumer finance business of 27 subsidiary offices of Guardian located in the four States of Pennsylvania, New Jersey, Delaware and Connecticut. These assets include consumer finance and sales finance receivables, customer lists, furniture, fixtures, and leasehold interests.

Applicant and Guardian operate one office each in the Wilmington and Harrisburg markets. Applicant and Guardian operate two offices and five offices, respectively, in the Philadelphia-Camden market. Accordingly, consummation of this acquisition would result in the elimination of some existing competition. However, in each of these markets the share of the estimated total dollar volume of direct consumer loans outstanding held by Applicant and Guardian combined is less than 1 percent, and a large number of small loan companies operate in each of the markets. Furthermore, the facts of record of this application indicate that the consumer finance activities of Guardian have not been profitable due to its high cost of obtaining operating funds. This situation has necessitated a contraction of Guardian's consumer finance business and the closing of numerous loan offices. Unless the operating difficulties in the consumer finance business of Guardian are overcome, FJNC may find it more expedient to liquidate additional finance offices than to continue to incur the losses associated with such operations. On the basis of these considerations, the Board concludes, with respect to existing competition, that Guardian does not have a significant competitive presence in the markets it serves.

With respect to potential and future competition, the facts of record show that Applicant has the financial and managerial capabilities to open additional offices in markets where it presently competes with Guardian and to expand on a de novo basis into other attractive areas presently served by Guardian. However, in view of Guardian's uncertain viability as a competitor in the markets it serves and the unsuccessful attempts by FJNC over the last three years to sell Guardian, it does not appear that any significant competition between Applicant and Guardian would be likely to develop in the future absent approval of this application. The Board further notes that Guardian's uncertain future, past operating performance, and relatively wide geographic diversification within Pennsylvania and New Jersey, tend to lessen its attractiveness as a "going concern" acquisition vehicle for bank holding companies that have not yet entered the consumer finance field. In light of the foregoing and other facts of record, it appears conjectural whether Applicant's acquisition of Guardian would foreclose an amount of future or potential competition that would be regarded as significant.

Under section 4(c)(8) of the Act, the Board is required to consider the public benefits that are likely to be derived from the acquisition of a nonbanking concern by a bank holding company and, in the context of this application, the Board believes that some public benefit may reasonably be expected to result from consummation of the proposal. Consummation of the proposal would insure a continuity of services to Guardian's existing loan customers, while relieving FJNC of the necessity of funding Guardian's consumer finance business and enabling FJNC to retain Guardian's other, more profitable activities, particularly its leasing activities. In addition, Applicant has committed to expand the services offered to current and prospective customers by making available larger loans (where permitted by State law) and real estate loans, and by offering additional credit insurance coverage. Applicant would bring to the markets served by Guardian its substantial financial and

[1] All banking data are as of December 31, 1975.

[2] Certain of Applicant's nonbanking activities are subject to review under section 4(a)(2) of the Act. It is anticipated that this review will be completed shortly. Pending completion of this review, Applicant may not commingle the assets of Guardian with assets that might be subject to divestiture or for which Applicant may be required to file an application to retain pursuant to section 4(c)(8) of the Act.

managerial resources and broadened, more sophisticated, financing services. While the Board is concerned about some aspects of this proposal to which adverse weight has been accorded in previous Orders dealing with similar proposals by other bank holding companies,[3] the Board concludes that, on balance, this proposal can be expected to result in benefits to the public that are sufficient to outweigh possible adverse effects.

Board of Governors of the Federal Reserve System, September 23, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-28460 Filed 9-28-76;8:45 am]

CITICORP

De Novo Expansion of the Activities of Gateway Life Insurance Co.

Citicorp, New York, New York, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to expand the activities of its indirect subsidiary Gateway Life Insurance Company ("Gateway"), Phoenix, Arizona.[1] Gateway, a subsidiary of Applicant's consumer finance subsidiary, Nationwide Financial Services Corporation ("Nationwide"), St. Louis, Missouri, currently engages in the activity of underwriting, as reinsurer, credit life and credit accident and health insurance directly related to extensions of credit by Nationwide in the 13 States in which Nationwide operated at the time of its acquisition by Applicant in 1973.[2] If the instant proposal is approved, Applicant proposes to expand Gateway's reinsurance activities de novo to include Applicant's lending subsidiaries in 13 additional States[3] and the Commonwealth of Puerto Rico. Applicant further proposes to modify the scope of Gateway's underwriting activities by causing Gateway to act as a direct underwriter, rather than as reinsurer, in those States in which it has developed the greatest reinsurance experience. This modification of the activity would be instituted on a selective State-by-State basis. The Board has previously determined that the activity of direct underwriting or underwriting as reinsurer of credit life and credit accident and health insurance which is directly related to extensions of credit by the bank holding company system is closely related to banking.[4]

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (41 FR 32668, August 4, 1976). The time for filing comments and views has expired, and the Board has considered the application and all comments received in the light of the public interest factors set forth in Section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, the largest banking organization in New York State and the second largest banking organization in the United States, controls two subsidiary banks with aggregate domestic deposits of approximately $19.5 billion, representing about 14.4 per cent of the total deposits in commercial banks in New York State.[5] Applicant engages in a variety of permissible nonbank activities through 85 direct and indirect domestic nonbank subsidiaries. Applicant's nonbank activities include mortgage banking activities,[6] leasing activities, consumer and sales finance activities, and insurance agency activities for the sale of insurance which is directly related to extensions of credit.

Gateway's activties will be limited to acting as direct underwriter or as reinsurer of credit life and credit accident and health insurance directly related to extensions of credit by Nationwide and Applicant's other lending subsidiaries. Since this proposal essentially involves a de novo expansion and modification of Applicant's existing underwriting/reinsuring activities, approval of this proposal would not have any adverse effects on either existing or potential competition in any relevant market.

Credit life and credit accident and health insurance is generally made available by banks and other lenders and is designed to assure repayment of a loan in the event of death or disability of the borrower. In connection with its addition of the underwriting of such insurance to the list of permissible activities for bank holding companies, the Board stated:

> To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally, such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service. (12 CFR 225.4(a)(10) n. 7)

Applicant's proposal involves two aspects: (1) the expansion of reinsurance activities into 13 additional States and the Commonwealth of Puerto Rico, and (2) the conversion of some of the existing reinsurance activities into direct underwriting activities. Applicant has stated that following approval of this proposal, Gateway will offer at reduced premiums the several types of credit insurance policies that it will reinsure in the additional areas it proposes to enter. Applicant's proposed rate reductions vary according to the various prima facie rates established in each of the respective additional States and in Puerto Rico. Thus, Applicant's proposal involves rate reductions for credit life insurance ranging from 2.3 percent to 15 percent below the maximum allowable premium rates established in each respective State and Puerto Rico, and rate reductions for credit accident and health insurance of 5 percent below the maximum allowable rate established in each respective State and Puerto Rico. The Board is of the view that these reductions in insurance premiums which Applicant proposes to establish are procompetitive and in the public interest. With regard to the portion of Applicant's proposal relating to the conversion of reinsurance activities into direct underwriting activities in those States where Applicant has already gained reinsurance experience, the Board regards this change as being primarily a change in form which will not materially alter the facts considered by the Board in connection with the original approval of Applicant's acquisition of Gateway. In

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[3] The Board has previously indicated that it will view a proposed acquisition of a going concern as offering substantially diminished returns to the public interest where the Applicant is a leading bank holding company with a substantial and growing consumer finance subsidiary that has achieved a significant presence in the industry and where the Applicant has the expertise, managerial talent, and financial resources to expand its operations by means other than acquisition (see the Board's Order denying Citicorp's applications to acquire Amfac Credit Corporation, West Coast Credit Corporation and Federal Discount Corporation, 61 Federal Reserve *Bulletin* 896 (1975)). Although some of these elements are present in the proposed acquisition, the Board notes that Applicant is a diversified corporation that engages primarily in nonbanking activities and already derives the majority of its income from consumer and business finance activities. Accordingly, this proposal does not present the possibility that the resources of its bank may give the holding company some competitive advantage in the performance of the nonbanking activity; and, there is otherwise no evidence in the record to indicate that consummation of this proposal, in and of itself, would result in any undue concentration of resources, conflicts of interests, or unsound banking practices.

[1] By Order dated September 11, 1973, the Board approved Applicant's application to acquire Gateway and thereby to engage in underwriting/reinsuring activities [38 FR 26507 (1973)].

[2] These States are: Arizona, California, Colorado, Georgia, Louisiana, Missouri, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.

[3] The additional States are: Alabama, Florida, Idaho, Indiana, Maryland, Mississippi, Montana, Nebraska, New York, North Carolina, South Dakota, Texas, and Virginia.

[4] By Order dated May 21, 1973, the Board approved the application of Northwest Bancorporation, Minneapolis, Minnesota, to acquire Banco Credit Life Insurance Company [38 FR 14205 (1973)]. In that Order, the Board stated: In adopting § 225.4(a)(10), the Board did not consider the underwriting of long term, high value decreasing term life insurance where age is a factor in the rate to be charged. Accordingly, underwriting insurance of this type, which is commonly offered in connection with real estate mortgage loans, is not regarded as having been determined to be closely related to banking under § 225.4(a)(10).

[5] All banking data are as of December 31, 1975.

[6] Applicant engages in mortgage banking activities through Advance Mortgage Company ("Advance"), Southfield, Michigan, a nonbank subsidiary which Applicant acquired on June 15, 1970. Under the provisions of Section 4(a)(2) of the Act, Applicant may not retain the shares of Advance beyond December 31, 1980, without Board approval. By Order dated December 26, 1973, the Board denied Applicant's application to retain Advance pursuant to Section 4(c)(8) of the Act [60 Federal Reserve *Bulletin* 50].

this regard, Applicant will maintain the public benefits to which it was previously committed.

Based upon the foregoing and other considerations reflected in the record, including a commitment by Applicant to maintain on a continuing basis the public benefits that the Board has found to be reasonably expected to result from this proposal and upon which the approval of this proposal is based, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, pursuant to authority hereby delegated.

By order of the Board of Governors,[7] effective September 20, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-28461 Filed 9-28-76;8:45 am]

FEDERAL OPEN MARKET COMMITTEE

Domestic Policy Directive of August 17, 1976

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on August 17, 1976.[1]

The information reviewed at this meeting suggests that growth in real output of goods and services is remaining moderate in the current quarter. In July industrial production changed little, but total employment expanded by a substantial amount. The civilian labor force also increased sharply, and the unemployment rate rose from 7.5 to 7.8 per cent. Retail sales declined in July, following the rebound in June. The rise in the wholesale price index for all commodities remained moderate, as average prices of farm products and foods declined. However, average prices of industrial commodities rose more than in other recent months. So far this year the advance in the index of average wage rates has been somewhat below the rapid rate of increase during 1975.

The average value of the dollar against leading foreign currencies has remained relatively steady in recent weeks, despite some disturbances in exchange markets for European currencies. In June the U.S. foreign trade deficit increased, but the deficit for the second quarter as a whole was somewhat smaller than that for the first quarter.

M_1, which had declined slightly in June, expanded appreciably in July. Inflows of the time and savings deposits included in the broader aggregates were considerably stronger than in June, and growth in M_2 and M_3 was rapid. Market interest rates have declined somewhat further in recent weeks.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions that will encourage continued economic expansion, while resisting inflationary pressures and contributing to a sustainable pattern of international transactions.

To implement this policy, while taking account of developments in domestic and international financial markets, the Committee seeks to maintain prevailing bank reserve and money market conditions over the period immediately ahead, provided that monetary aggregates appear to be growing at about the rates currently expected.

By order of the Federal Open Market Committee, September 24, 1976.

ARTHUR L. BROIDA,
Secretary.

[FR Doc.76-28457 Filed 9-28-76;8:45 am]

FIRST VIRGINIA BANK OF COLONIAL HEIGHTS

Application for Merger of Banks

Before the Federal Reserve Bank of Richmond acting under delegated authority from the Board of Governors of the Federal Reserve System.

First Virginia Bank of Colonial Heights, Colonial Heights, Virginia (Applicant), a member state bank of the Federal Reserve System, has applied to the Board of Governors of the Federal Reserve System for prior approval pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) to merge with Richmond National Bank, Richmond, Virginia (Richmond National), the resulting bank to continue as a member state bank under the charter of Applicant with the name of First Virginia Bank—Colonial. As an incident to the merger, Applicant's main office, its sole existing branch, and the eight existing branches of Richmond National would become authorized branch offices of the resulting bank; the head office of the resulting bank would be the present main office of Richmond National.

As required by the Bank Merger Act, notice of the proposed merger, in form approved by the Board of Governors, has been published, and reports on competitive factors have been requested from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

The Federal Reserve Bank of Richmond (Reserve Bank), acting under authority delegated by the Board of Governors of the Federal Reserve System (12 CFR 265.2(f)(28)), has considered the application and all comments and reports received in the light of the factors set forth in the Bank Merger Act.

Applicant and Richmond National are both wholly owned subsidiaries of First Virginia Bankshares Corporation, Falls Church, Virginia, a registered bank holding company which is the state's sixth largest banking organization. The relevant banking market is the Richmond Ranally Metro Area (RMA), which includes the City of Richmond and portions of Chesterfield, Goochland, Hanover, and Henrico Counties. Richmond National operates solely within this market, and Applicant does business in the market through its one existing branch. Applicant's main office is located in the Petersburg RMA, which is composed of the cities of Colonial Heights, Hopewell, and Petersburg, a small portion of Chesterfield County, northeastern Dinwiddie County, and western Prince George County. As of March 31, 1976, Richmond National's deposits of $38.6 million represented approximately 1.5 percent of total commercial bank deposits in the relevant banking market. Applicant, with deposits of $4.2 million, held approximately 2.2 percent of the Petersburg RMA market and less than one tenth of one percent of the relevant banking market. Due to their common ownership, the merger of Richmnod National into Applicant would result in no change in the relative position of First Virginia Bankshares in the state or in either of the banking markets involved and would have no adverse effects on existing or potential competition in the area.

The financial and managerial resources and future prospects of the two banks proposing to merge and of the resulting institution are satisfactory and are considered to be consistent with approval of the application. Considerations relating to the convenience and needs of the community to be served lend some weight in support of approval since Applicant, following merger, could offer its customers larger loans without resorting to participations with other subsidiaries of the holding company. In addition, there should be a pooling of resources within the merging banks and a reduction of duplicated services that would result in more efficient operations and improved customer services.

On the basis of the record in this case, the application is approved for the reasons summarized above. However, the transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the date of this Order, unless such period is extended for good cause by the Board of Governors of the Federal Reserve System or by the Federal Reserve Bank of Richmond pursuant to delegated authority.

By order of the Federal Reserve Bank of Richmond, acting pursuant to delegated authority for the Board of Gov-

[7] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Jackson and Lilly. Absent and not voting: Governors Coldwell and Partee.

[1] The Record of Policy Actions of the Committee for the meeting of August 17, 1976 is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

ernors of the Federal Reserve System, effective September 21, 1976.

ROBERT P. BLACK,
President.

[FR Doc.76-28462 Filed 9-28-76;8:45 am]

FIRST WEWOKA BANCORPORATION, INC.

Order Denying Formation of Bank Holding Company

First Wewoka Bancorporation, Inc., Wewoka, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) ("Act") of formation of a bank holding company through acquisition of 80 percent or more of the voting shares of First National Bank in Wewoka, Wewoka, Oklahoma ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those submitted by the Comptroller of the Currency recommending denial of the application, in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating company formed for the express purpose of becoming a bank holding company through the acquisition of Bank. The proposed transaction involves the transfer of control of Bank from individuals to a corporation owned by the same individuals. Bank holds deposits of approximately $11.3 million,[1] representing 20.9 per cent of the total deposits in commercial banks in the Seminole County banking market,[2] and ranks as the second largest of six banks operating in the market. Since the subject proposal is essentially a corporate reorganization and Applicant has not subsidiaries, it does not appear that consummation of the proposal would have any adverse effects on existing or potential competition, increase the concentration of banking resources, or have other adverse effects on any other banks in any relevant area. Thus, the Board concludes that competitive considerations are consistent with approval of the application.

Under section 3(c) of the Act, the Board is required to consider the financial and managerial resources and future prospects of the proposed bank holding company and the bank to be acquired. With respect to the subject application, it appears that the future prospects of Applicant are entirely dependent upon the profitable operations of Bank. In this regard, Applicant proposes to service a debt of more than $430,000,[3] which it will incur as part of this transaction, over a twelve year period primarily through dividends from Bank. In view of Bank's operating history, the Board is unable to conclude that Applicant's projected earnings for Bank are reasonable or attainable. The Board is of the view that the future earnings of Bank would not provide Applicant with the financial flexibility necessary to meet its debt servicing requirements as well as any unexpected problems that might arise at Bank. Furthermore, the dividends involved in the subject proposal may not provide Applicant with the necessary financial strength to service its acquisition debt while maintaining Bank's capital position. On the basis of the foregoing and other facts of record, the Board concludes that the considerations relating to the banking factors weigh against approval of the application.[4]

As stated previously, the proposed formation of Applicant merely represents a restructuring of Bank's ownership with no changes in Bank's operations or services. Consequently, considerations relating to the convenience and needs of the community to be served lend no weight toward approval of the application. Moreover, in view of Applicant's debt servicing requiremnets, consummation of the subject proposal could diminish Bank's ability to continue to serve the area as a viable banking alternative.

On the basis of all of the facts of record, it is the Board's judgment that the subject proposal would result in a bank holding company with financial resources that would be inadequate to service its debt while maintaining Bank's capital account. Accordingly, the Board concludes that consummation of the proposed transaction would not be in the public interest and that the application should be denied.

By order of the Board of Governors,[5] effective September 22, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-28463 Filed 9-28-76;8:45 am]

HARLAN NATIONAL CO.

Order Approving Formation of Bank Holding Company and Engaging in Insurance Agency Activities

Harlan National Company, Harlan, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 98.2 per cent of the voting shares of The Harlan National Bank, Harlan, Iowa ("Bank").

At the same time, Applicant 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)(2)), for permission to acquire voting shares of Bank Insurance Agency, Harlan, Iowa ("Agency"), and thereby engage as agent in the sale of credit life and credit accident and health insurance direclty related to extensions of credit or the provision of other financial services by Bank and Applicant. Such activities have been determined by the Board in § 225.4(a)(9)(ii)(a) and (b) of Regulation Y to be permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with sections 3 and 4 of the Act (41 FR 26077). The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act and the considerations specified in section 4(c)(8) of the Act.

By Order dated October 31, 1975, the Board of Governors denied the application of Harlan National Company to become a bank holding company through the acquisition of Bank (40 FR 52440).[1] Thereafter, Applicant filed a Request for Reconsideration pursuant to § 262.3(g)(5) of the Board's Rules of Procedure (12 CFR 262.3(g)(5)). By Order dated June 11, 1976 (41 FR 26077), the Board agreed to reconsider the application.

Applicant is a nonoperating corporation organized for the purposes of becoming a bank holding company through acquisition of Bank and of acquiring the insurance agency business of the principal shareholders of Bank. Bank ($24.6 million in deposits) controls .2 of 1 per cent of the total commercial bank deposits in Iowa. Bank is the largest of seven commercial banks operating in the Shelby County banking market (the relevant market),[2] holding approximately 30 per cent of the total commercial bank deposits in the market. Inasmuch as the proposal represents merely a restructuring of Bank's ownership from individuals to a corporation owned by the same individuals and Applicant has no other subsidiary banks, acquisition of Bank by Applicant would have no adverse effects on competition in any relevant area. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

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[1] All banking data are as of December 31, 1975.

[2] The Seminole County banking market, the relevant geographic market for purposes of analyzing the competitive effects of the subject proposal, is approximated by all of Seminole County, Oklahoma.

[3] Two hundred thousand dollars of the total indebtedness is to be injected into Bank to strengthen its capital.

[4] The Comptroller of the Currency recommended denial of this application primarily on the basis of the financial considerations involved. When given an opportunity to respond to the Comptroller's comments Applicant did not do so.

[5] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson and Lilly. Absent and not voting: Governor Partee.

[1] In view of this action, the Board considered the application to acquire Agency to be moot.

[2] All banking data are as of December 31, 1975.

In its earlier Order denying the application, the Board noted that the financial and managerial resources and future prospects of Bank were generally satisfactory but expressed concern over such factors as applied to Applicant. In the Board's view, Applicant lacked the necessary financial flexibility and resources to meet its annual debt servicing requirements as well as any unforeseen financial problems that might arise at Bank. This situation was aggravated by the substantial acquisition debt involved in the formation of another bank holding company, First National Company of Missouri Valley, Inc., Missouri Valley, Iowa,[3] also wholly owned by Applicant's sole owner, Mr. Fred R. Horne, Jr., and the apparent lack of sufficient financial resources on Mr. Horne's part to retire the personal debt associated with both the previously approved formation and the instant proposal without adversely affecting the resources of the subsidiary banks.

In connection with its Request for Reconsideration, Applieant has submitted current information with respect to the financial conditions of Bank, Mr. Horne and the First National Company of Missouri Valley. This new information indicates that Applicant will have significantly greater financial resources and flexibility as a result of the improvement in both Bank's capital and earnings position and Mr. Horne's personal financial condition. The strengthened financial condition of Bank and Mr. Horne and the recent actions of Mr. Horne to reduce to an acceptable level the acquisition debt involved in the Missouri Valley formation causes the Board to believe that the acquisition debt involved in both the proposed formation of Applicant and in the Missouri Valley formation can now be serviced by both holding companies as well as by the resources of Mr. Horne without adversely affecting the subsidiary banks.

Accordingly, the Board is of the view that considerations relating to the financial and managerial resources and future prospects of Applicant's proposal are now consistent with aproval of the application. The Board, however, reiterates its concern with holding company formations involving substantial acquisition debt where, as here, the owner or owners are already principals in one or more other bank holding companies whose formations likewise involved a considerable amount of acquisition debt incurred by both the proposed holding company and the principals. As it has previously stated,[4] the Board believes it advisable to apply to such cases the more restrictive standards regularly applied in analyzing multibank holding company proposals.

With respect to convenience and needs considerations, Applicant proposes to increase business and installment loans and to host local seminars for area farmers. These consideraitons are consistent with approval of the application. Accordingly, it is the Board's view that consummation of the proposal to form a bank holding company would be consistent with the public interest and that the application to acquire Bank should be approved.

With respect to the proposed acquisition of Agency, there is no evidence in the record indicating that proposal would result in any undue concentration of resources, unfair competition, conflicts of interests, unsound banking practices, or other adverse effects on the public interest. On the other hand, approval of the application would allow the continued convenience to Bank's customers of a readily accessible source of credit-related insurance services. This result is regarded as being in the public interest.

Based on the foregoing and other considerations reflected in the record, it is the Board's judgment that considerations relating to the fatcors under section 3(c) of the Act and the balance of the public interest factors under section 4(c)(8) of the Act both favor approval of Applicant's proposals.

Accordingly, the applications are approved for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order. The acquisition of Bank and the commencement of insurance agency activities shall be made not 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. The determination as to Applicant's insurance activities is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to present evasion thereof.

By order of the Board of Governors,[5] effective September 20, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-28464 Filed 9-28-76;8:45 am]

[3] Approved by the Board, February 20, 1973, 38 FR 5512 (March 1, 1973).

[4] BHCo. Inc., Hardin, Montana, 60 Federal Reserve *Bulletin* 123 (1974); Nebraska Banco, Inc., Ord, Nebraska, 62 Federal Reserve *Bulletin* 638 (1976).

[5] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson and Lilly. Absent and not voting: Governor Partee.

LAWRENCE BANCSHARES, INC.

Order Approving Formation of Bank Holding Company

Lawrence Bancshares, Inc., Lawrence, Kansas ("Applicant"), has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)), to become a bank holding company through the acquisition of an additional 61.9 percent of the voting shares of Lawrence National Bank and Trust Company, Lawrence, Kansas ("Bank").[1]

Notice of the application, affording an opportunity for interested persons to submit comments and views, has been given in accordance with Section 3(b) of the Act. Time for filing comments and views has expired, and the application and all comments received have been considered in light of the factors set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a corporation organized for the purpose of becoming a bank holding company through the acquisition of Bank. Upon acquisition of Bank (deposits of $37.3 million), Applicant would control the 36th largest bank in Kansas, holding .42 percent of total deposits in commercial banks in the State.[2] Bank is the second largest of six banks operating in the relevant banking market, which is approximated by Douglas County, and controls 25.95 percent of total market deposits. Applicant's principal is also a director of Sumner County Bancshares, Inc., a one-bank holding company in Wellington, Kansas. The subsidiary bank of this holding company is located in a separate banking market, and consummation of the proposal would eliminate neither existing or potential competition, nor would it increase the concentration of banking resources or have an adverse effect on other banks in the relevant market. Accordingly, on the basis of the record, it is concluded that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, which are dependent upon those of Bank, are considered generally satisfactory and consistent with approval. Although Applicant will incur debt in connection with the proposal, it appears that Applicant will be able to service this debt without impairing the financial condition of Bank during that period. Therefore, considerations relating to banking factors are regarded as being consistent with approval. Although consummation of the transaction would effect no immediate changes in the services that are being offered by Bank, considerations relating to the convenience and needs of the community to be served are regarded as being consistent with approval. It has been determined that con-

[1] Applicant presently owns 22.8 percent of Bank's shares.

[2] All banking data are as of December 31, 1975.

summation of the proposal to form a bank holding company would be consistent with the public interest and 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 Kansas City pursuant to delegated authority.

By order of the Secretary of the Board, acting pursuant to delegated authority from the Board of Governors, effective September 21, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-28465 Filed 9-28-76;8:45 am]

M & S BANCORP

Order Approving Acquisition of Bank

M & S BanCorp, Janesville, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 98.83 per cent of the voting shares of Merchants Bank of Evansville, Evansville, Wisconsin ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the seventeenth largest banking organization in Wisconsin, controls two banks with aggregate deposits of approximately $84 million, representing 0.6 per cent of the total deposits in commercial banks in the State.[1] Acquisition of Bank, which opened for business on May 3, 1976, would neither immediately increase Applicant's share of commercial bank deposits in Wisconsin nor result in a significant increase in the concentration of banking resources in the State.

Bank recently commenced operations in Evansville, a city located in the south-central portion of Wisconsin, with a population of approximately 3,000 persons, according to the 1970 Census. Prior to Bank's entry a few months ago, only one other bank operated in Evansville. Applicant, through its two existing subsidiary banks, is the largest of 14 banking organizations in the relevant banking market[2] and controls approximately 21 per cent of total deposits in that market. The second largest banking organization therein controls 19 per cent of total deposits in the market. The office of Applicant's banking subsidiary closest to Bank is in Janesville, 16 miles southwest of Evansville. However, neither of Applicant's subsidary banks may branch into Evansville because of the "home office protection" afforded by Wisconsin's restrictive branching laws. Accordingly, in view of the fact that this proposal involves the acquisition of essentially a de novo bank, it appears that the proposed transaction would have no significant adverse effects on existing or potential competition. Therefore, based upon all facts of record, the Board has determined that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, its subsidiary banks, and Bank are regarded as generally satisfactory. Therefore, considerations relating to banking factors are consistent with approval of the application. The addition of a second banking alternative in Evansville should enhance banking competition and thus increase services to the residents of the area. In fact, apparently in response to Bank's formation, the other competing bank has increased both the interest paid on savings accounts and its banking hours to include Saturday morning banking services. Accordingly, considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be 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 exended 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,[3] effective September 22, 1976.

RICHARD D. ABRAHAMSON,
Assistant Secretary of the Board.

[FR Doc.76-28466 Filed 9-28-76;8:45 am]

[1] All banking data are as of June 30, 1975, and reflect bank holding company formations and acquisitions approved through August 31, 1976.

[2] The Janesville-Beloit banking market is the relevant market in this case and is approximated by Rock County, Wisconsin.

[3] Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson and Lilly. Absent and not voting: Governor Partee.

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on September 20, 1976. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FMC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before October 15, 1976, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, Room 5216, 425 I Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-376-5425.

FEDERAL MARITIME COMMISSION

The Federal Maritime Commission requests clearance of a new single time Circular Letter No. 6-76. The Circular Letter will be sent to common carriers by water in the foreign and domestic offshore commerce of the United States and will request information concerning the amount and type of fuel consumed in 1972, 1975, and the first six months of 1976, as well as programs to reduce energy currently in use by the carriers and view points on what the Commission may be able to do to reduce energy use. The information is necessary for the Commission to fulfill its responsibilities under the Energy Policy and Conservation Act (Public Law No. 94-163). Response is voluntary. FMC estimates reporting burden to be five hours per response for the approximately 1125 respondents.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.76-28484 Filed 9-28-76;8:45 am]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region IV, has been changed from September 30, 1976, to October 13, 1976, from 10:00 a.m. to 4:00 p.m., Room 5 A-1, 1776 Peachtree Street NW., Atlanta, Georgia 30309. The meeting will be devoted to the initial step of procedures for screening and evaluat-

ing the qualifications of architect-engineers under consideration for selection to furnish professional services for the proposed driver ranges, skid pan, control tower, utilities extension and central energy plant for Federal Law Enforcement Training Center, Brunswick, Georgia. Frank and open discussion of the professional qualifications of the firms being considered is essential to insure selection of the best qualified firms. Accordingly, pursuant to a determination that it will be concerned with a matter listed in 5 U.S.C. 552(b)(5) the meeting will not be open to the public.

Dated: September 13, 1976.

E. L. JOHNSON,
Acting Regional Administrator.

[FR Doc.76-28582 Filed 9-28-76;8:45 am]

GOVERNMENT PRINTING OFFICE

DEPOSITORY LIBRARY COUNCIL TO PUBLIC PRINTER

Meeting

The Depository Library Council to the Public Printer will meet on October 21 and 22, 1976, at the Ramada Inn, 1900 North Fort Myer Drive, Arlington, Virginia.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Any member of the public who wishes to attend shall notify Mr. J. D. Livsey, Head, Library and Statutory Distribution Service, Government Printing Office, Washington, D.C. 20401 (Telephone Area Code 703-557-2050).

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chairman.

Dated: September 20, 1976.

T. F. MCCORMICK,
Public Printer.

[FR Doc.76-28478 Filed 9-28-76;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 76-83]

LICENSING MANAGEMENT CORP.

Intent To Grant Foreign Exclusive Patent License

In accordance with the NASA Foreign Licensing Regulations, 14 CFR 1245.405 (e), the National Aeronautics and Space Administration announces its intention to grant to the Licensing Management Corporation, New York, New York, an exclusive patent licenses in Australia, Canada, France, Great Britain, India, Japan, Netherlands, Denmark, Sweden, U.S.S.R., and West Germany for the NASA owned invention covered by the foreign counterparts of U.S. Patent Application Serial No. 688,853 for "Method of Inhibiting Maillard Reaction Browning in Food Products", filed by NASA on May 21, 1976. Copies of the above U.S. Patent Application can be purchased from the National Technical Information Service, Springfield, Virginia, 22150, at a cost of $3.50 a copy. Interested parties should submit written inquiries or comments on or before November 29, 1976 to the Assistant General Counsel for Patent Matters, Code GP, National Aeronautics and Space Administration, Washington, D.C., 20546.

S. NEAL HOSENBALL,
General Counsel.

SEPTEMBER 21, 1976.

[FR Doc.76-28145 Filed 9-28-76;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

[Docket No. 76-2]

PROPOSED DUTY INCREASE ON CERTAIN BRANDY

Extension of Time for Rebuttal Briefs

The FEDERAL REGISTER notice of August 19, 1976, (41 FR page 35107) announcing a public hearing relating to a proposed duty increase on certain brandy, specifies that rebuttal briefs may be filed with the Office of the Special Representative for Trade Negotiations by the close of business, September 27, 1976. The date for the filing of rebuttal briefs is hereby extended until the close of business, October 6, 1976. The transcript of the public hearings held on September 21 and 22 will be available for examination on and after September 29 in Room 729, Office of the Special Representative for Trade Negotiations, 1800 G Street, NW., Washington, D.C.

This extension of the date for the filing of rebuttal briefs will not preclude any action to adjust the tariff on brandy during this extension period.

WILLIAM B. KELLY, Jr.,
Chairman, Trade Policy Staff Committee.

[FR Doc.76-28425 Filed 9-28-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 12; Rev. 1, Amdt. 5]

ASSOCIATE ADMINISTRATOR FOR FINANCE AND INVESTMENT

Delegation of Authority

Delegation of Authority No. 12, Revision 1 (38 FR 13063), as amended (38 FR 16001, 38 FR 26509, 40 FR 8398 and 40 FR 18054), is further amended to provide certain surety bond authority to the Associate Administrator for Finance and Investment. Actions taken prior to the effective date hereof are hereby ratified to the extent that they would have been authorized under this delegation had the delegation been in effect and continue to be in effect from the effective date hereof as amended Paragraph I.B.2.a. reads as follows:

* * * * *

B. *Lease Guarantee and Surety Bond Programs.* * * *

2.a. To guarantee sureties of small business against portions of losses resulting from the breach of bid, payment, or performance bonds on contracts up to the statutory limit.

Effective date: September 1, 1976.

Dated: September 7, 1976.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc.76-28395 Filed 9-28-76;8:45 am]

DALLAS DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Dallas District Advisory Council will hold a public meeting at 9:30 a.m., Friday, October 15, 1976, at Gino's, 10th Floor of Merchants State Bank, 5217 Ross, Dallas, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information, write or call Emly S. Atkinson, U.S. Small Business Administration, 1100 Commerce Street, Dallas, Texas 75242 (214) 749-2706.

Dated: September 17, 1976.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.76-28391 Filed 9-28-76;8:45 am]

[License Nos. 04/05-0085, 04/05-0057]

DIXIE CAPITAL CORP. AND CAPITAL CORP.

Approval of Application for Consolidation

Pursuant to the provisions of § 107.903 of the Small Business Administration (SBA) rules and regulations governing small business investment companies (SBICs) (13 CFR 107.903 (1976)) a notice of filing of an application for the purchase/consolidation of CSRA Capital Corporation (survivor) 914 Georgia Railroad Bank Building, Augusta, Georgia 30303 and Dixie Capital Corporation 2210 Gas Light Tower, Atlanta, Georgia 30303, was published in the FEDERAL REGISTER on July 20, 1976 (41 FR 31954).

Interested persons were given an opportunity to send their comments to SBA on the proposed purchase/consolidation. No comments were received.

Upon consideration of the application and other relevant information, SBA hereby approves the purchase/consolidation of the above mentioned SBICs.

Dated: September 15, 1976.

(Catalog of Federal Domestic Assistance Program No. 59011, Small Business Investment Companies).

GERALD L. FEIGEN,
Acting Deputy Associate Administrator for Investment.

[FR Doc.76-28394 Filed 9-28-76;8:45 am]

[License No. 06/06-0182]

FIRST SBIC OF ARKANSAS, INC.

Issuance of License To Operate as a Small Business Investment Company

On June 21, 1976, a notice was published in the FEDERAL REGISTER (41 F.R. 24959) stating that First SBIC of Arkansas, Inc., Suite 706, Worthen Bank Building, 200 West Capital Avenue, Little Rock, Arkansas 72201, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the regulations governing small business investment companies (13 C.F.R. 107.102 (1976)), for a license to operate as a small business investment company (SBIC).

Interested parties were given to the close of business July 6, 1976, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 06/06-0182 to First SBIC of Arkansas, Inc., pursuant to section 301 (c) of the Small Business Investment Act of 1958, as amended. The effective date of licensing is September 7, 1976.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: September 15, 1976.

GERALD L. FEIGEN,
Acting Deputy Associate Administrator for Investment.

[FR Doc.76-28393 Filed 9-28-76;8:45 am]

PORTLAND DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Portland District Advisory Council will hold a meeting along with the SCORE/ACE group at 9:30 a.m., until 11:30 a.m., Wednesday, October 27, 1976, at the Calaroga Terrace, with a luncheon following at the U.S. National Bank of Oregon, Portland, Oregon. After the luncheon a public meeting of Advisory Council members only will be held at the U.S. National Bank of Oregon, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call J. Don Chapman, U.S. Small Business Administration, Federal Building, 1220 S.W. Third Avenue, Portland, Oregon 97204 (503) 423-3461.

Dated: September 17, 1976.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.76-28392 Filed 9-28-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 156]

ASSIGNMENT OF HEARINGS

SEPTEMBER 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.

Correction

MC 111729 (Sub No. 571), Purolator Courier Corp. Now assigned October 18, 1976 at Omaha, Nebraska instead of October 16, 1976 at Omaha, Nebraska and will be held in the Lincoln Room, Omaha Hilton Hotel, 1616 Dodge Street.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-28516 Filed 9-28-76;8:45 am]

[Notice No. 155]

ASSIGNMENT OF HEARINGS

SEPTEMBER 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.

Correction

MC 111729 (Sub No. 571), Purolator Courier Corp. now being assigned October 12, 1976 (4 days) at Omaha, Nebraska and October 18, 1976 (1 week) at Kansas City, Missouri instead of October 16, 1976 at Kansas City, Missouri in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-28517 Filed 9-28-76;8:45 am]

[Notice No. 154]

ASSIGNMENT OF HEARINGS

SEPTEMBER 23, 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 46 Sub 11, Chicago, Rock Island and Pacific Railroad Co.—Abandonment of Trackage Rights—over Missouri Pacific Railroad and Texas & Pacific Railway Between Lamourie & Alexandria, Abandonment of Line Between Eunice & Lamourie; and Abandonment of Operation Between Eunice & Alexandria, Louisiana, now being assigned December 2, 1976 (2 days), at Eunice, Louisiana, in a hearing room to be later designated.

MC 43867 Sub 29, A Leander Mcalister Trucking Company and MC 105984 Sub 15, John B. Barbour Trucking Company, now being assigned December 6, 1976 (1 Week), at Wichita Falls, Texas in a hearing room to be later designated.

MC 107445 (Sub No. 10), Underwood Machinery Transport, Inc. now being asisgned November 30, 1976 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC 138824 (Sub No. 2), Redway Carriers, Inc. and MC 141920, Keller Trucking, Inc. now being assigned December 2, 1976 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC 135725 (Sub No. 17), Fry Trucking, Inc. now being assigned December 7, 1976 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC 116915 (Sub No. 21), Eck Miller Transportation Corp. now being assigned December 6, 1976 (1 day) at Chicago, Illinois in a hearing room to be later designated.

MC 35835 (Sub No. 31), Jensen Transport, Inc. MC 67450 (Sub No. 53), Peterlin Cartage Co., MC 107496 (Sub No. 1027), Ruan Transport Corp., MC 112801 (Sub No. 180), Transport Service Co., MC 114194 (Sub No. 182), Kreider Truck Service, Inc., MC 115331 (Sub No. 404), Truck Transport Inc., MC 119974 (Sub No. 52), L.C.L. Transit Co., MC 124078 (Sub No. 684), Schwerman Trucking Co., MC 127840 (Sub No. 44), and MC 136774 (Sub No. 5), MC-MOR-HAN Trucking Co., Inc. now being assigned December 8, 1976 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC 134922 (Sub-No. 117), B. J. McAdams, Inc., now assigned October 21, 1976, at Washington, D.C. is canceled.

MC 135871 (Sub-No. 22), H. G. M. Transport Company, now assigned October 4, 1976, at New York, N.Y. is postponed to October 5, 1976 (1 day), at New York, N.Y., Room D-2206, 26 Federal Plaza, Federal Building.

MC-C-8993, Ward Trucking Corp. V. Hemingway Transport, Inc., now assigned October 13, 1976, at Pittsburgh, Pa. is canceled and reassigned for October 13, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 138875 (Sub-No. 29), Shoemaker Trucking Company, now assigned October 13, 1976, at Boise, Idaho is postponed indefinitely.

MC 95540 (Sub 954), Watkins Motor Lines, Inc., now being assigned November 30, 1976 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 117565 (Sub 93), Motor Service Company Inc., now being assigned November 30, 1976 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 117940 Sub 178, Nationwide Carriers, Inc., now being assigned December 2, 1976 (2 days), at Columbus, Ohio, in a hearing room to be later designated.

FF 480, Midwest Container Services, Inc., now being assigned December 6, 1976 (1 week), at Columbus, Ohio, in a hearing room to be later designated.

MC 73165 (Sub-No. 381), Eagle Motor Lines, Inc., now assigned November 11, 1976, at Dallas, Tex. is canceled and application dismissed.

MC-F 12707, The Chief Freight Lines Company—Control and Merger—Morrison Motor Freight, Inc., now being assigned January 11, 1976, (9 days), at Tulsa, Ok., in a hearing room to be later designated.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.76-28518 Filed 9-28-76;8:45 am]

[Notice AB 128]

EAST WASHINGTON RAILWAY CO.

Entire Line Abandonment—In the District of Columbia and Prince Georges County, Maryland

September 20, 1976.

The Interstate Commerce Commission hereby gives notice that its Environmental Affairs Staff has concluded that the proposed abandonment by the East Washington Railroad Company, of its entire railroad between Chesapeake Junction and Seat Pleasant, Md., and a spur from Chesapeake Junction to Benning, a total distance of 3.387 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, et seq., and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA. It was concluded, among other things, that the associated environmental impacts are considered insignificant because the existing traffic volume generated by the subject line could be diverted to motor carirage over readily accessible traffic corridors with only minor alterations in highway traffic volumes, fuel consumption, ambient air quality, intrusive noise incidents, and safety conditions. Inasmuch as there are no economic development plans in the area dependent upon the subject line, abandonment would not have a serious adverse effect on urban land usage and community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before November 1, 1976.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

Robert L. Oswald,
Secretary.

[FR Doc.76-28521 Filed 9-28-76;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

September 24, 1976.

An application, as summarized below, has been filed resquesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before October 14, 1976.

FSA No. 43243—*Liquid Fertilizers from Michaud, Idaho.* Filed by Union Pacific Railroad Company, (No. 142), for interested rail carriers. Rates on liquid fertilizers, in tank-car loads, as described in the application, from Michaud, Idaho, to points in western trunk-line territory.

Grounds for relief—Market competition.

Tariff—Supplement 30 to Union Pacific Railroad Company tariff 6044-J, I.C.C. No. 5794. Rates are published to become effective on November 5, 1976.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.76-28519 Filed 9-28-76;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Applications

September 24, 1976.

The following applications to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065(d)(2)), and notice thereof to all interested persons is hereby given as provided in such rules.

Carriers having a genuine interest in an application may file an original and three copies of verified statements in opposition with the Interstate Commerce Commission on or before October 29, 1976. (This procedure is outlined in the Commission's report and order in Gateway Elimination, 119 M.C.C. 530.) A copy of the verified statement in opposition must also be served upon applicant or its named representative. The verified statement should contain all the evidence upon which protestant relies in the application proceeding including a detailed statement of protestant's interest in the proposal. No rebuttal statements will be accepted.

No. MC 113855 (Sub-No. 355G), filed August 9, 1976. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal and metal articles*, (1) between points in New York, on the one hand, and, on the other, points in Colorado, Idaho, Iowa, Kansas, Montana, North Dakota, Nebraska, Nevada, Oregon, South Dakota, Washington, and Wyoming; and (2) between points in Connecticut, Delaware, Indiana, Kentucky, Massachusetts, Maryland, North Carolina, New Jersey, Ohio, Rhode Island, Virigina, West Virginia and the District of Columbia, on the one hand, and, on the other, points in Idaho, Iowa, Kansas, Montana, North Dakota, Nebraska, Nevada, Oregon, South Dakota, Washington and Wyoming (except between points in Ohio and Indiana, on the one hand, and, on the other, points in South Dakota). The purpose of this filing in (1) and (2) is to eliminate the gateways at Scranton, Pa.; Elgin, Ill.; points in Utah and South Dakota. (3) between points in Pennsylvania, on the one hand, and, on the other points in Idaho, Iowa, Kansas, Minnesota, Montana, North Dakota, Nebraska, Nevada, Oregon, Washington, and Wyoming. The purpose of this filing is to eliminate the gateways at Elgin, Ill.; points in South Dakota and Utah. (4) between points in Michigan, on the one hand, and, on the other, points in Idaho, Minnesota, North Dakota, Nebraska, Oregon, Washington and Wyoming; and (5) between points in Illinois, on the one hand, and, on the other, points in Idaho, Iowa, Minnesota, Montana, North Dakota, Nevada, Oregon, Washington and Wyoming. The purpose of this filing in (4) and (5) is to eliminate the gateways at Davenport, Iowa; South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Utah, Montana and Wyoming.

(6) between points in Iowa, on the one hand, and, on the other, points in Idaho, Minnesota, Montana, North Dakota, Nevada, Oregon, Washington, Wisconsin and Wyoming. The purpose of this filing is to eliminate the gateways at points in South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Utah, Montana and Wyoming. (7) between points in Missouri, on the one hand, and, on the other, points in Connecticut, Delaware, Idaho, Massachusetts, Maryland, Minnesota, Montana, North Dakota, New Jersey, New York, Nevada, Oregon, Rhode Island, Washington, Wyoming and the District of Columbia. The purpose of this filing is to elimi-

nate the gateways at points in South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Elgin, Ill.; Scranton and Allentown, Pa. (8) between points in Wisconsin, on the one hand, and, on the other, points in Idaho, Montana, North Dakota, Nevada, Oregon, Washington and Wyoming. The purpose of this filing is to eliminate the gateways at South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Montana, Wyoming and Utah. (9) between points in Minnesota, on the one hand, and, on the other, points in California, Idaho, Montana, North Dakota, Nevada, Oregon, South Dakota, Utah, Washington and Wyoming. The purpose of this filing is to eliminate the gateway at points in Southern Minnesota, South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Utah, Montana and Wyoming. (10) between points in South Dakota, on the one hand, and, on the other, points in California, Idaho, Nevada, Oregon and Washington. The purpose of this filing is to eliminate the gateways at points in Nebraska, Utah, Montana and Wyoming.

(11) between points in Nebraska, on the one hand, and, on the other, points in Idaho, Illinois, Iowa, Minnesota, Montana, North Dakota, Nevada, Oregon, Washington, Wisconsin and Wyoming. The purpose of this filing is to eliminate the gateways at points in Utah, South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Montana, Wyoming, and Southern Minnesota. (12) between points in North Dakota, on the one hand, and, on the other, points in California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. The purpose of this filing is to eliminate the gateways at points in South Dakota, Utah, Montana and Wyoming. (13) between points in Kansas, on the one hand, and, on the other, points in California, Idaho, Illinois, Iowa, Minnesota, Montana, North Dakota, Nevada, Oregon, Utah, Washington, Wisconsin and Wyoming. The purpose of this filing is to eliminate the gateways at points in South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Southern Minnesota, Utah, Montana and Wyoming. (14) between points in Colorado, on the one hand, and, on the other, points in California, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maryland, Minnesota, Montana, North Carolina, North Dakota, New Jersey, Nebraska, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, West Virginia, Washington, Wyoming and the District of Columbia. The purpose of this filing is to eliminate the gateways at points in South Dakota and points in Minnesota and Iowa within 50 miles of Sioux Falls, S. Dak.; Nebraska, Davenport, Iowa; Elgin, Ill.; Scranton and Allentown, Pa.

(15) between points in Idaho, Nevada, Oregon, and Washington, to points in Maine, New Hampshire and Vermont. The purpose of this filing is to eliminate the gateway at points in Utah. (16) from points in Oregon and Washington, to points in Mississippi and Tennessee. The purpose of this filing is to eliminate the gateway at points in California. Restrictions: (1) Service to and from Illinois in (1), (2), (3), (13) and (14) above is restricted to the following described portion of Illinois: points in that part of Illinois, on, north and west of a line beginning at Quincy, Ill., and extending along Illinois Highway 104 to junction U.S. Highway 66, thence northward along U.S. Highway 66 to junction Illinois Highway 53 (formerly Alternate U.S. Highway 66), at or near Gardner, Ill., thence along Illinois Highway 53 to junction U.S. Highway 66 at a point approximately 10 miles northeast of Plainfield, Ill., and thence along U.S. Highway 66 to Chicago, Ill. (2) Service to and from Iowa in (1), (2), (3) and (5) above is restricted to points in that part of Iowa on and west of U.S. Highway 65.

No. MC 118831 (Sub-No. 129-G), filed April 19, 1976. Applicant: CENTRAL TRANSPORT, P.O. Box 2608, High Point, N.C. 27261. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid chemicals* (except anhydrous ammonia, fertilizer and fertilizer materials), in bulk, from points in North Carolina (except Charlotte, N.C.), to points in Alabama, Florida, and Georgia. The purpose of this filing is to eliminate a gateway at a point in the Charlotte, N.C., commercial zone which is in South Carolina. (2) *Liquid chemicals*, in bulk, from points in South Carolina to points in Alabama and Florida. The purpose of this filing is to eliminate a gateway at a point in the Charlotte, N.C., commercial zone. (3) *Liquid chemicals*, in bulk, (except anhydrous ammonia, fertilizer and fertilizer materials), from points in North Carolina to points in Georgia. The purpose of this filing is to eliminate a gateway at any point in South Carolina. (4) *Liquid chemicals*, in bulk, (except anhydrous ammonia, vegetable oil, fertilizer materials), from points in North Carolina (except Charlotte) to points in Alabama and Mississippi. The purpose of this filing is to eliminate a gateway (1) at any point in South Carolina and (2) a point in the Lanett, Ala., commercial zone. (5) *Liquid chemicals*, in bulk, (except vegetable oil and fertilizer), from points in South Carolina to points in Alabama and Mississippi. The purpose of this filing is to eliminate a gateway at a point in the Lanett, Ala., commercial zone which is in Georgia.

(6) *Liquid chemicals*, in bulk (except anhydrous ammonia, fertilizer and fertilizer materials), from points in North Carolina (except Charlotte) to points in Tennessee. The purpose of this filing is to eliminate a gateway at (1) any point in South Carolina and (2) a point in Mecklenberg County, N.C. (7) *Liquid chemicals*, in bulk, from points in South Carolina to points in Tennessee. The purpose of this filing is to eliminate a gateway at any point in Mecklenberg County, N.C. (8) *Liquid chemicals*, in bulk, (except anhydrous ammonia, fertilizer and fertilizer materials), from points in North Carolina (except Charlotte, N.C.) to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island. The purpose of this filing is to eliminate a gateway (1) at any point in South Carolina and (2) a point in the Charlotte, N.C., commercial zone. (9) *Liquid chemicals*, in bulk, from points in South Carolina to points in the destination states named in (8) above. The purpose of this filing is to eliminate a gateway in the Charlotte, N.C., commercial zone. (10) *Liquid chemicals*, in bulk, (except anhydrous ammonia, fertilizer and fertilizer materials), from points in North Carolina (except Charlotte) to points in Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin and to points in Illinois and Missouri (except points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone). The purpose of this filing is to eliminate a gateway at (1) any point in South Carolina and (2) a point in the Charlotte, N.C., commercial zone.

(11) *Liquid chemical*, in bulk, from points in South Carolina to points in the destination territory described in (10) above. The purpose of this filing is to eliminate a gateway at a point in the Charlotte, commercial zone. (12) *Liquid chemicals*, in bulk (except anhydrous ammonia, fertilizer and fertilizer materials), from points in North Carolina (except Charlotte, N.C.), to points in Arkansas and to points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone as defined by the Commission. The purpose of this filing is to eliminate the gateways at (1) any point in South Carolina, (2) a point in the Charlotte, N.C., commercial zone and (3) a point in Robertson County, Tenn. (31) *Liquid chemicals*, in bulk, from points in South Carolina to points in the destination territory in (12) above. The purpose of this filing is to eliminate the gateways at (1) a point in the Charlotte, N.C., commercial zone and (2) a point in Robertson County, Tenn. (14) *Liquid chemicals*, in bulk (except anhydrous fertilizer and fertilizer materials), from the plant site of Howerton-Gowen Company, Incorporated at Chesapeake, Va., (within the Norfolk, Va., commercial zone) to points in South Carolina and Virginia. The purpose of this filing is to eliminate a gateway at a point in North Carolina in the destination territory authorized in Sub 73. (15) *Liquid chemicals*, in bulk, (except anhydrous ammonia, fertilizer and fertilizer materials), from the origin in (14) above to points in Virginia, North Carolina and Georgia. The purpose of this filing is to eliminate the same gateway as in (14) above and (2) a point in South Carolina.

(16) *Liquid chemical*, in bulk (except anhydrous ammonia, fertilizer and fertilizer materials), from the origin as specified in (14) above to points in Georgia, Florida, and Alabama. The pur-

pose of this filing is to eliminate the same gateway and in (15) above except Charlotte, N.C., is the part of South Carolina that has to be observed. (17) *Liquid chemicals*, in bulk (except anhydrous ammonia, vegetable oil, fertilizer and fertilizer materials), from the origin as specified in (14) above to points in Alabama and Mississippi. The purpose of this filing is to eliminate the gateways at (1) a point in North Carolina which is a destination in Sub 73, (2) a point in South Carolina corporate limits of Charlotte and (3) a point in the Lanett, Ala., commercial zone. (18) *Liquid chemicals*, in bulk, (except anhydrous ammonia, fertilizer and fertilizer materials), from the origin as specified in (14) above to the destination territory described in (10) above. The purpose of this filing is to eliminate a gateway at a point in the Charlotte, N.C., commercial zone which is outside the Charlotte corporate limits. (19) *Liquid chemicals*, in bulk, (except anhydrous ammonia, fertilizer and fertilizer materials), from the origin as specified in (14) above to the destination territory specified in (12) above. The purpose of this filing is to eliminate the gateways at (1) a point in the Charlotte, N.C., commercial zone and (2) a point in Robertson County, Tenn. (20) *Dimethyl terephthalate*, in bulk, in tank vehicles, from Old Hickory, Tenn., to points in South Carolina and Virginia. The purpose of this filing is to eliminate a gateway at a point in Transylvania County, N.C.

(21) *Dimethyl terephthalate*, in bulk, in tank vehicles, from Old Hickory, Tenn., to points in Georgia and North Carolina. The purpose of this filing is to eliminate the gateways at (1) a point in Transylvania County, N.C., and (2) a point in South Carolina. (22) *Dimethyl terephthalate*, in bulk, in tank vehicles, from the origins in (20) above to points in Georgia, Alabama and Florida. The purpose of this filing is to eliminate the gateways at (1) a point in Transylvania County, N.C., and (2) a point in the Charlotte commercial zone. (23) *Dimethyl terephthalate*, in bulk, in tank vehicles, from the origins in (20) above to points in Alabama and Mississippi. The purpose of this filing is to eliminate the gateways at (1) a point in Transylvania County, N.C., (2) any point in South Carolina and (3) a point in the Lanett, Ala., commercial zone which is in Georgia. (24) *Dimethyl terephthalate*, in bulk, in tank vehicles, from the origins in (20) above to the destination territory specified in (8) above. The purpose of this filing is to eliminate the gateways at (1) a point in Transylvania County, N.C., and (2) a point in the Charlotte, N.C., commercial zone which is in South Carolina. (25) *Dimethyl terephthalate*, in bulk, from points in North Carolina (except Charlotte, N.C.,) to points in Arkansas, Alabama, Georgia, Kentucky, Indiana, Illinois, Michigan, Missouri, Mississippi, North Carolina, Ohio, South Carolina, Virginia, and West Virginia (except Kanawha County). The purpose of this filing is to eliminate gateways at (1) a point in Spartanburg County, S.C., and (2) a point in Robertson County, Tenn.

(26) *Dimethyl terephthalate*, in bulk, from points in South Carolina (except from points in Greenville County, S.C., to points in Illinois, Michigan and Missouri), to points in the states specified in (25) above. The purpose of this filing is to eliminate the gateways at (1) any point in North Carolina (2) then a point in Hanover County, N.C., and (3) a point in Robertson County, Tenn. (27) *Dimethyl terephthalate*, in bulk, from Gibbstown, N.J., to points in South Carolina and Virginia. The purpose of this filing is to eliminate the gateway at the plantsite of E. I. duPont de Nemours & Co., Inc. at Graingers, N.C. (28) *Dimethyl terephthalate*, in bulk from the origins in (27) above to points in Georgia and North Carolina. The purpose of this filing is to eliminate the gateways at (1) the plant site in (27) above and (2) a point in South Carolina (29) *Dimethyl terephthalate*, in bulk, from the origin in (27) above to points in Alabama, Florida, and Georgia. The purpose of this filing is to eliminate the gateways at (1) the plantside in (27) above and (2) a point in the Charlotte, N.C., commercial zone in South Carolina. (30) *Dimethyl terephthalate*, in bulk, from the origin in (27) above to points in Alabama and Mississippi. The purpose of this filing is to eliminate the gateways at (1) the plantsite specified in (27) above (2) a point in South Carolina and (3) a point in the Lanett, Ga., commercial zone.

(31) *Dimethyl terephthalate*, in bulk, from the origin in (27) above to points in Tennessee (except Kingsport and Elizabethton). The purpose of this filing is to eliminate the gateways at (1) the plantsite specified in (27) above and (2) a point in Spartanburg County, S.C. (32) *Dimethyl terephthalate*, in bulk, from the origin in (27) above to the destinations specified in (25) above. The purpose of this filing is to eliminate the gateways (1) at the plantsite specified in (27) above and (2) a point in Spartanburg County, S.C., and (3) a point in Robertson County, Tenn. (33) *Dimethyl terephthalate*, in bulk, from the origin specified in (27) above to points in Tennessee. The purpose of this filing is to eliminate the gateways at (1) the plantsite designated in (27) above (2) a point in South Carolina and (3) a point in Mecklenberg County, N.C. (34) *Liquid fertilizer and fertilizer materials*, in bulk, in tank or hopper type vehicles, from points in South Carolina to points in Delaware, Georgia, Maryland, New Jersey, Pennsylvania, South Carolina, Virginia and West Virginia (except points in Kanawha and Pleasants Counties, W. Va.). The purpose of this filing is to eliminate the gateway at a point in Hartford County, N.C. (35) *Dimethyl terephthalate*, in bulk, from the origins specified in (27) above to the destinations specified in (8) above. The purpose of this filing is to eliminate the gateways at (1) a plantsite designated in (27) above (2) and a point in the Charlotte, N.C., commercial zone in South Carolina.

(36) *Liquid chemicals*, in bulk (except vegetable oil and fertilizer), from points in Richmond County, Ga., to points in Alabama and Mississippi. The purpose of this filing is to eliminate the gateways at (1) any points in South Carolina and (2) a point in the Lanett, Ala., commercial zone in Georgia. (37) *Liquid chemicals*, in bulk (except anhydrous ammonia, fertilizer, and fertilizer materials), between points in North Carolina (except Charlotte). The purpose of this filing is to eliminate a gateway at any point in South Carolina. (38) *Liquid chemicals*, in bulk (except anhydrous ammonia, fertilizer and fertilizer materials, between points in South Carolina. The purpose of this filing is to eliminate a gateway at any point in North Carolina. (39) *Liquid chemicals*, in bulk, between points in South Carolina. The purpose of this filing is to eliminate a gateway at a point in Richmond County, Ga. (40) *Liquid chemicals*, in bulk, from points in Richmond County, Ga., to points in (1) Georgia, and (2) Florida and Alabama. The purpose of this filing is to eliminate the gateways at (1) any point in South Carolina and (2) a point in the Charlotte, N.C., commercial zone.

(41) *Liquid chemicals*, in bulk, from points in Richmond County, Ga., to points in (8) above. The purpose of this filing is to eliminate the gateways at the Charlotte, N.C., commercial zone. (42) *Liquid chemicals*, in bulk, from points in Richmond County, Ga., to points in (10) above. The purpose of this filing is to eliminate a gateway at Charlotte, N.C., and a point in its commercial zone. (43) *Liquid chemicals*, in bulk, from points in Richmond County, Ga., to points in (12) above. The purpose of this filing is to eliminate the gateways at (1) a point in the Charlotte, N.C., commercial zone and (2) a point in Robertson County, Tenn.

Office of Proceedings

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

Notice

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience

in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 119767 (Sub-No. E17) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issue of March 31, 1976, and republished, as corrected, this issue. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 425 Thirteenth St. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared foodstuffs* (except commodities in bulk, frozen foods and meats and meat products), from points in that part of Illinois west of U.S. Highway 45, to points in the Upper Peninsula of Michigan. The purpose of this filing is to eliminate the gateway of Watertown, Wis.

NOTE.—The purpose of this correction is to state the correct commodity description.

No. MC 119767 (Sub-No. E16) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issue of March 31, 1976, and republished, as corrected, this issue. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 425 Thirteenth St. NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared foodstuffs* (except commodities in bulk, frozen foods and meats and meat products), from points in St. Louis, Lake and Cook Counties, Minn., to points in Jefferson, Henry, Des Moines, Lee, and Van Buren Counties, Iowa. The purpose of this filing is to eliminate the gateway of Watertown, Wis.

NOTE.—The purpose of this correction is to state the correct commodity description.

No. MC 114552 (Sub-No. E182) (Partial Correction), filed September 18, 1975, published in the FEDERAL REGISTER issue of September 10, 1976, and republished, as corrected, this issue. Applicant: SENN TRUCKING COMPANY, P.O. Drawer 220, Newberry, S.C. 29108. Applicant's representative: William P. Jackson, P.O. Box 267, Arlington, Va. 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such composition boards as are also supplies and accessories used in the manufacture and installation of composition boards* (except commodities in bulk).

NOTE.—The purpose of this partial correction is to state the correct commodity description. The remainder of this letter-notice remains as previously published.

No. MC 105045 (Sub-No. E153), filed November 28, 1975. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, Ind. 47701. Applicant's representative: George H. Veech (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles*, which, because of size or weight, require use of special equipment, from points in the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia, to points in Minnesota. The purpose of this filing is to eliminate the gateway of Grundy County, Ill.

No. MC 105045 (Sub-No. E154), filed November 28, 1975. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, Ind. 47701. Applicant's representative: George H. Veech (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and aluminum articles*, from the facilities of National Southwire Aluminum Co., National Aluminum Corp., and the plantsite of Southwire Company, at or near Hawesville, Ky., to points in New Hampshire. The purpose of this filing is to eliminate the gateway of Grundy County, Ill.

No. MC 41406 (Sub-No. E113), filed November 13, 1975. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Ave., Hammond, Ind. 46323. Applicant's representative: E. Stephen Heisley, 666 Eleventh St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Cincinnati, Ohio to points in that part of Iowa on, north and east of a line beginning at the Iowa-Illinois State line, and extending along U.S. Highway 34 to junction U.S. Highway 218, thence along U.S. Highway 218 to junction U.S. Highway 151, thence along U.S. Highway 151 to junction Iowa Highway 13, thence along Iowa Highway 13 to the Iowa-Wisconsin State line. The purpose of this filing is to eliminate the gateways of Middletown, Ohio and Gary, Ind.

No. MC 41406 (Sub-No. E57), filed November 13, 1975. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Avenue, Hammond, Ind. 46323. Applicant's representative: E. Stephen Heisley, 666 Eleventh Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Mansfield, Ohio, to points in Lake County, Ind., and that part of Porter County on and north of Indiana Highway 2. The purpose of this filing is to eliminate the gateway of Sturgis, Mich., Chicago, Ill., Commercial Zone and Portage, Ind. Commercial Zone (Gary, Ind.).

No. MC 119767 (Sub-No. E25) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issue of March 31, 1976, and republished, as corrected, this issue. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 425 Thirteenth Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, (except commodities in bulk), from points in Wright, Hennepin, Anoka, Washington, Carver, Scott, Dakota and Ramsey Counties, Minn., to points in Missouri on, south, and east of a line beginning at the Missouri-Arkansas State line and extending along U.S. Highway 65 to junction U.S. Highway 54, thence along U.S. Highway 54 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Missouri-Illinois State line. The purpose of this filing is to eliminate the gateways of the plantsites and warehouse facilities utilized by Land O'Lakes, Inc., at Chippewa Falls and Eau Claire, Wis.

NOTE.—The purpose of this correction is to restrict the destination territory.

No. MC 119767 (Sub-No. E1) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issue of March 10, 1976, and republished, as corrected, this issue. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 425 Thirteenth Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, as described in the Section B of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (a) from points in Wisconsin on, north and west of a line beginning at the Wisconsin-Illinois State line and extending along Wisconsin Highway 67 to junction U.S. Highway 18, thence along U.S. Highway 18 to Lake Michigan, to points in Kentucky on and south of U.S. Highway 460 (except Louisville), (b) from points in Wisconsin, to points in Kentucky on and south of a line beginning at the Ohio River at or near Kosmosdale, Ky. and extending along Kentucky Highway 44 to junction U.S. Highway 150 at or near Mt. Washington, Ky., thence along U.S. Highway 150 to London, Ky., thence along U.S. Highway 25 and 25E to the Kentucky-Virginia-Tennessee State lines at or near Middlesboro, Ky., and (c) from points in Wisconsin on and west of U.S. Highway 51, to points in Kentucky (except Louisville). The purpose of this filing is to eliminate the gateway of Pana, Ill.

NOTE.—The purpose of this correction is to indicate the correct territorial description.

No. MC 89617 (Sub-No. E3), filed May 21, 1974. Applicant: LEWIS TRUCK LINES, INC., Rt. 6, P.O. Box 65A, Conway, S.C. 29526. Applicant's representative: Jim Martin (same as above). 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), from points in Georgia on and south of a line beginning at the Alabama-Georgia State line and extending along Georgia Highway 48 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction Georgia Highway 20, thence along Georgia Highway 20 to junction Interstate Highway 85, thence along Interstate Highway 85 to the Georgia-South Carolina State line,

to points in North Carolina on and east of a line beginning at the South Carolina-North Carolina State line and extending along U.S. Highway 1 to junction U.S. Highway 220, thence along U.S. Highway 220 to junction North Carolina Highway 73, thence along North Carolina Highway 73 to junction U.S. Highway 501, thence along U.S. Highway 501 to junction North Carolina Highway 86, thence along North Carolina Highway 86 to junction U.S. Highway 70, thence along U.S. Highway 70 to Morehead City, N.C. The purpose of this filing is to eliminate the gateway of points in Horry County, S.C.

No. MC 89617 (Sub-No. E1), filed May 21, 1974. Applicant: LEWIS TRUCK LINES, INC., Rt. 6, P.O. Box 65A, Conway, S.C. 29526. Applicant's representative: Jim Martin (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Forest products, lumber* (which includes plywood), *and veneer*, from points in North Carolina on and south of a line beginning at the North Carolina-South Carolina State line and extending along North Carolina Highway 79 to junction U.S. Highway 74, thence along U.S. Highway 74 to junction North Carolina Highway 71, thence along North Carolina Highway 71 to junction North Carolina Highway 20, thence along North Carolina Highway 20 to junction North Carolina Highway 87, thence along North Carolina Highway 87 to junction U.S. Highway 74–76, thence along U.S. Highway 74–76 to Onslow Bay, to points in Maryland, Delaware, New Jersey, Pennsylvania, and the District of Columbia. The purpose of this filing is to eliminate the gateway of points in Horry County, S.C.

No. MC 114552 (Sub-No. E220) (Correction), filed September 22, 1975, published in the FEDERAL REGISTER issue of September 10, 1976, and republished, as corrected, this issue. Applicant: SENN TRUCKING COMPANY, P.O. Drawer 220, Newberry, S.C. 29108. Applicant's representative: William P. Jackson, Jr., P.O. Box 267, Arlington, Va. 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such composition boards as are also supplies and accessories used in the manufacture and installation of composition boards* (except commodities in bulk), from points in Mississippi, to points in New Jersey, to the District of Columbia, to points in Maryland on and east of a line beginning at the Carroll County-Frederick County line to junction Maryland Highway 26, thence along Maryland Highway 26 to junction Maryland Highway 27, thence along Maryland Highway 27 to junction Maryland Highway 118, thence along Maryland Highway 118 to junction Maryland Highway 107, thence along Maryland Highway 107 to the Maryland-Virginia State line, to points in Delaware, and to points in Virginia on and east of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 15 to junction U.S. Highway 250, thence along U.S. Highway 250 to junction Virginia Highway 605, thence along Virginia Highway 605 to junction U.S. Highway 522, thence along U.S. Highway 522 to junction Orange County-Spotsylvania County line, thence along the Orange County-Spotsylvania County line to junction Spotsylvania County-Culpeper County line, thence along the Spotsylvania County-Culpeper County line to junction Culpeper County-Stafford County line, thence along Culpeper County-Stafford County line to junction Stafford County-Fauquier County line, thence along Stafford County-Fauquier County line to junction Fauquier County-Prince William County line, thence along the Fauquier County-Prince William County line to junction, U.S. Highway 211, thence along U.S. Highway 211 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction Virginia Highway 655, thence along Virginia Highway 655 to the Virginia-Maryland State line. The purpose of this filing is to eliminate the gateways of the plant site and warehouse facilities of the Abitibi Corporation near Roaring River, N.C. and the plant site and warehouse facilities of the Celotex Corporation in Wayne County, N.C.

NOTE.—The purpose of this correction is to state the correct territorial description.

No. MC 119767 (Sub-No. E18) (Correction), filed June 4, 1974, published in the FEDERAL REGISTER issue of March 31, 1976, and republished, as corrected, this issue. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, Wis. 53158. Applicant's representative: Henry E. Seaton, 915 Pennsylvania Building, 425 Thirteenth Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared foodstuffs* (except commodities in bulk, frozen foods and meats and meat products), from points in Pipestone, Murray, Cottonwood, Jackson, Nobles and Rock Counties, Minn., to points in that part of the Upper Peninsula of Michigan on and east of U.S. Highway 41. The purpose of this filing is to eliminate the gateway of Watertown, Wis.

NOTE.—The purpose of this correction is to state the correct commodity description.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-28522 Filed 9-28-76;8:45 am]

[Notice No. 38]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

SEPTEMBER 29, 1976.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before October 19, 1976. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76304. By order entered September 24, 1976 the Motor Carrier Board approved the transfer to Special Transpo, Inc., Hartwell, Georgia, of the operating rights set forth in Certificate No. MC-138793 (Sub-No. 2), issued September 26, 1974, to Max Medley, doing business as Medco Farm Lines, Hampton, Arkansas, authorizing the transportation of used closing and used wearing apparel and rags, from points in Pennsylvania, New Jersey (except Hackensack, Elizabeth, and Kearny, N.J.), New York (except points in that part of the New York, N.Y., Commercial Zone as defined by the Commission, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the act (the exempt zone), Delaware, Rhode Island, Massachusetts, Connecticut, Michigan, Wisconsin, Illinois, Nebraska, Iowa, North Carolina, South Carolina, Maryland, Arkansas, and Missouri, to Brownsville, McAllen, Laredo, El Paso, and Eagle Pass, Tex., and Nogales, Ariz. Michael G. Thompson, The First National Building, Twentieth Floor, Little Rock, Ark., 72201, attorney for transferee.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-28523 Filed 9-28-76;8:45 am]

[Notice No. 127]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 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 October 14, 1976. 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 ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 109223 (Sub-No. 3TA), filed September 17, 1976. Applicant: HERITAGE TRUCKING CO., 6030 Joy Road, Detroit, Mich. 48204. Applicant's representative: James D. Osmer, 100 W. Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by products, dairy products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, (1) from Detroit, Michigan, to points in Clinton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Oakland, Saginaw, Sanilac, Shiawassee, St. Clair, Tuscola, Washtenaw and Wayne Counties, Mich.; and (2) from Detroit, Mich., to points in Defiance, Lucas, Ottaway and Wood Counties, Ohio. Restricted in (1) above to traffic moving under a continuing contract or contracts with the Rath Packing Company; and in (2) above to traffic moving under continuing contracts with the Rath Packing Company and John Morrrell and Company, for 180 days. Supporting shippers: The Rath Packing Company, P.O. Box 330, Waterloo, Iowa 50704. John Morrell & Co., P.O. Box 1266, Sioux Falls, S. Dak. 57101. Send Protests to: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

No. MC 113666 (Sub-No. 110TA), filed September 17, 1976. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, Pa. 16229. Applicant's representative: Daniel R. Smetanick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural pesticides* (except in bulk), from Muskegon, Mich., to points in Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin; and Kingston, N.C.; Jacksonville, Fla.; and Troy, Ala.; and Ports of Entry on the International Boundary between the United States and Canada located in Michigan, North Dakota, and Montana, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Agricultural Division, American Cyanamid Company, P.O. Box 400, Princeton, N.J. 08540. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa. 15222.

No. MC 116459 (Sub-No. 61TA), filed September 16, 1976. Applicant: RUSS TRANSPORT, INC., P.O. Box 4022, Pineville Road, Route 5, Chattanooga, Tenn. 37405. Applicant's representative: Sam Speer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, in tank vehicles, from Kingsport, Tenn., to points in Georgia, Kentucky, North Carolina, South Carolina, and Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southeastern Fly Ash Co., Inc., P.O. Box 461, Snellville, Ga. 30278. 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 117119 (Sub-No. 598TA) (Correction), filed September 8, 1976, published in the FEDERAL REGISTER issue of September 17, as MC 117119 (Sub-No. 589TA), and republished as corrected this issue. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: L. M. McLean (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 commodities in bulk), from the plant and warehouse facilities of Archer Daniels Midland Company, located in Decatur, Ill., to points in Arkansas, Louisiana, Texas, Oklahoma, and New Mexico, 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: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201. The purpose of this republication is to correct the sub-number in this proceeding.

No. MC 118207 (Sub-No. 3TA), filed September 17, 1976. Applicant: FAST FREIGHTWAYS, INC., 2600 S. Parker Road, P.O. Box 2347, Denver, Colo. 80201. Applicant's representative: Harold Taylor (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude rubber*, from Lake Charles, La. and Borger, Tex., to Santa Ana, Calif. and Portland, Oreg., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: AMF Voit, Inc., 3801 S. Harbor Blvd., Santa Ana, Calif. 92704. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th St., Denver, Colo. 80202.

No. MC 119619 (Sub-No. 91TA), filed September 17, 1976. Applicant: DISTRIBUTORS SERVICE CO., 2000 W. 43rd St., Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meat*, in combination bins, in Government-sealed trailers, from the premises of Illinois Meat Company, at Chicago, Ill., to the facilities of Granite State Packing Co., at Manchester, N.H., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Illinois Meat Company, Kenneth Boire, Comptroller, 1119 W. 47th Place, Chicago, Ill. 60609. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 124813 (Sub-No. 154TA), filed September 17, 1976. Applicant: UMTHUN TRUCKING CO., 910 South Jackson St., P.O. Box 166, Eagle Grove, Iowa 50533. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals* (except liquids in bulk), from the facilities of Land O'Lakes, located in Polk County, Iowa, to points in Minnesota, Nebraska and Wisconsin, for 180 days. Supporting shipper: Land O'Lakes Agricultural Services Division, 2827 8th Ave., South, Fort Dodge, Iowa 50501. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 129656 (Sub-No. 10TA), filed September 16, 1976. Applicant: TRI-DELTA BUILDING MATERIALS COMPANY, INC., 4629 East University Drive, Phoenix, Ariz. 85034. Applicant's representative: Lewis P. Ames, 111 West Monroe-10th Floor, Phoenix, Ariz. 85003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing, roofing materials, equipment and supplies* (except in bulk), from points in Los Angeles, Riverside, San Bernardino and Ventura Counties, Calif., to points in Clark County, Nev., for 180 days.

Supporting shipper: (1) Red Rose Roofing Co., 3332 Lane, Las Vegas, Nev.; (2) Dean Roofing Co., Inc., 3463 S. Procyon Ave., Las Vegas, Nev.; and (3) Shope Roofing & Flooring Co., Inc., 4610 Wynn Road, Las Vegas, Nev. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 3427 Federal Bldg., 230 N. First Ave., Phoenix, Ariz. 85025.

No. MC 134323 (Sub-No. 89TA), filed September 16, 1976. Applicant: JAY LINES, INC., 720 North Grand, Amarillo, Tex. 79105. Applicant's representative: Gailyn Larsen, 521 South 14th St., P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C in *Description in Motor Carrier Certificates* M.C.C. 209 and 766, from the plantsite and warehouse facilities of MBPXL Corporation, at or near Rockport, Mo., to points in Alabama, Georgia, North Carolina, and South Carolina, under a continuing contract with MBPXL Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: MBPXL Corporation, Box 2519, Wichita, Kans. 67201. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395, Herring Plaza, Amarillo, Tex. 79101.

No. MC 134922 (Sub-No. 195TA), filed September 17, 1976. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Display units*, for carpet samples, from Little Rock, Ark., to points in Maryland, New York, Pennsylvania, West Virginia, New Jersey and Virginia, for 180 days. Supporting shipper: Regal Displays, Inc., 6621 Geyer Springs Road, Little Rock, Ark. 72209. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 West Capitol, Little Rock, Ark. 72201.

No. MC 136605 (Sub-No. 18TA), filed September 17, 1976. Applicant: DAVIS BROS. DIST., INC., 2024 Trade St., P.O. Box 1027, Missoula, Mont. 59801. Applicant's representative: W. E. Seliski (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plasterboard*, from Cody, Wyo., to the Port of Entry on the United States-Canada International Boundary Line, located at or near Sweetgrass, Mont., restricted to traffic moving to Alberta, Canada. Applicant intends to tack with its Alberta, Canada authority, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. L. Johnson, President, Continental Hardwood Co., 19613 81st Ave., Kent, Wash. 98031. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Ave., North Billings, Mont. 59101.

No. MC 136786 (Sub-No. 102TA), filed September 17, 1976. Applicant: ROBCO TRANSPORTATION, INC., 309 5th Ave., N.W., P.O. Box 12729, New Brighton, Minn. 55112. Applicant's representative: Stanley C. Olsen, Jr., 7525 Mitchell Road, Eden Prairie, Minn. 55343. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Rome, Ga., to points in Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma and South Dakota, for 180 days. Supporting shipper: Fox Manufacturing Company, P.O. Drawer A, Rome, Ga. 30161. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 138177 (Sub-No. 7 TA), filed September 16, 1976. Applicant: BROWN TRUCKING, INC., 7622 Apple Valley Road, Memphis, Tenn. 38138. Applicant's representative: John Paul Jones, 189 Jefferson Ave., Memphis, Tenn. 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) (1) *Commodities*, the transportation of which because of size or weight require the use of special equipment or special handling; (2) *commodities*, the transportation of which because of size or weight, do not require the use of special equipment or special handling when moving in the same vehicle and on the same bill of lading as commodities which by reason of size or weight do require the use of special equipment or special handling; (3) *heavy machinery and related tools, parts, and supplies moving in connection* therewith; (4) *self-propelled articles* (except motor vehicles as defined in Section 203 (a) (13) of the Interstate Commerce Act) *and related machinery, tools, parts, and supplies* moving in connection therewith; (5) *contractors' machinery, equipment, materials and supplies;* (1) between Memphis, Tenn., on the one hand, and, on the other, Florence, Muscle Shoals, Sheffield and Tuscumbia, Ala.; points in Arkansas, Ashley, Baxter, Bradley, Calhoun, Chicot, Clark, Clay, Cleburn, Cleveland, Columbia, Conway, Craighead, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Fulton, Garland, Grant, Greene, Hot Springs, Independence, Izard, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Marion, Mississippi, Monroe, Nevada, Ouachita, Perry, Phillips, Poinsett, Prarie, Pulaski, Randolph, Saint Frances, Saline, Searcy, Sharp, Stone, Union, Van Buren, White and Woodruff Counties, Ark.; Cairo, Ill.; points in Ballard, Carlisle, Fulton, Galloway, Graves, Hickman, Marshall and McCracken Counties, Ky.; Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, DeSoto, Fulton, Grenada, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Taliahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster and Yalobusha Counties, Miss.; and Bolinger, Butler, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott and Stoddard Counties, Mo.

(2) From Aurora, Chicago, Matoon and Moline, Ill.; Fort Wayne and Indianapolis, Ind.; Waverly, Iowa; New Orleans, La.; Benton Harbor, Detroit and Mount Pleasant, Mich.; Minneapolis and St. Paul, Minn.; St. Louis, Mo.; Akron, Lima and Marion, Ohio; Philadelphia, Pa.; Lubbock, Pampa and San Antonio, Tex.; and Green Bay, Milwaukee, Waukesha and Wausaw, Wis., to Memphis, Tenn.; and (B) *Steel shelled tanks* used for storage of carbon dioxide, the transportation of which, because of their size or weight, require the use of special equipment or special handling and related machinery, tools, parts and supplies, moving in connection therewith, from Monee, Ill., to Memphis, Tenn.; and between points in Alabama, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Chemetron Corporation, 3078 Air Park St., P.O. Box 18554; and Deltequip, Inc., 3815 Winchester Road, P.O. Box 10840, Memphis, Tenn. 38118. Hawkins Equipment Company, 1475 Thomas St., Memphis, Tenn. 38107. Moody Equipment & Supply Company, 3625 Tulane, Box 9001, Memphis, Tenn. 38109. Tri-State Equipment Co., Inc., 520 Mulberry, Memphis, Tenn. 38103. Send protests to: Kenneth R. Inman, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 100 North Main Bldg., 100 North Main St., Suite 2006, Memphis, Tenn. 38103.

No. MC 139495 (Sub-No. 167TA), filed September 17, 1976. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, 1501 E. 8th St., Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H St., N.W., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toilet preparations, household and industrial cleaning products, insect control products, air fresheners, starches, brooms, brushes, mops, germicides, and promotional materials* (except commodities in bulk); and (2) *equipment, materials and supplies* used or useful in the manufacture, sale and distribution of the commodities in (1) above (except commodities in bulk); (1) from Great Bend, Kans., to points in the United States (except Alaska, Hawaii, Kansas, South Dakota, North Dakota, Nebraska, Oklahoma, Minnesota, Iowa, Missouri, Arkansas, Colorado and Texas); and (2) from points in Louisiana, Mississippi, Illinois, Michigan,

Georgia, Ohio, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts and Vermont, to Great Bend, Kans., restricted in (1) and (2) above to the transportation of shipments either originating at or destined to the facilities of the Fuller Brush Company, at Great Bend, Kans., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fuller Brush Company, P.O. Box 48652, Niles, Ill. 60648. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 501 Petroleum Bldg., Wichita, Kans. 67202.

No. MC 139923 (Sub-No. 23TA), filed September 13, 1976. Applicant: MILLER TRUCKING CO., INC., 105 S. 8th St., Stroud, Okla. 74097. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Toughy Ave., Park Ridge, Ill. 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Soy bean flour, wheat starch, wheat gluten, wheat bran, wheat germ, and meat substitutes* (except commodities in bulk), from the facilities of FAR-MAR-CO., Inc., located in Hutchinson, Kans., and points in the commercial zone of Hutchinson, Kans., to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming; and (2) *Soybean flour and soy protein concentrate* (except commodities in bulk), from the facilities of FAR-MAR-CO., Inc., located at St. Joseph, Mo., to points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming, for 180 days. Supporting shipper: FAR-MAR-CO., Inc., 906 North Halstead, Hutchinson, Kans. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 Northwest Third St., Oklahoma City, Okla. 73102.

No. MC 140615 (Sub-No. 16TA), filed September 15, 1976. Applicant: DAIRYLAND TRANSPORT, INC., P.O. Box 1116, Wisconsin Rapids, Wis. 54494. Applicant's representative: Jacob P. Billig, 2033 K St., N.W., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dairy products, dairy by-products, and gift-paks* (except frozen commodities and commodities in bulk), from the facilities of Cheez Co., Inc., at Wisconsin Rapids, Wis., to the District of Columbia; Chicago, Ill.; Baltimore and Rockville, Md.; Boston, Brockton, Cambridge, and Springfield, Mass.; Detroit, Mich.; Berkley Heights, Camden, Elizabeth, Florence, Pleasantville, Vineland, and Woodbridge, N.J.; Liverpool, Long Island City, New York, and Solvay, N.Y.; Akron and Cleveland, Ohio; Collingdale, Philadelphia, Pittsburgh, and Wawa, Pa.; (2) *Materials, supplies, and equipment* used in the preparation, packaging, and sale of dairy products, dairy by-products, and gift-paks (except frozen commodities and commodities in bulk), from Chicago, Ill.; Camden, Elizabeth, Pitman, and Port Newark, N.J.; Adams and New York, N.Y.; Brewster, Ohio; New Wilmington and Philadelphia, Pa., and (3) *Dairy products, dairy by-products, and gift-paks* (except frozen commodities and commodities in bulk), from Bongards, Minn. and Hopkinton, Iowa, to the facilities of Cheez Co., Inc., at Wisconsin Rapids, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cheez Co., Inc., 2323 Jefferson St., Wisconsin Rapids, Wis. 54494. Send protests to: Richard K. Shullaw, District Supervisor, Interstate Commerce Commission, 139 W. Wilson St., Room 202, Madison, Wis. 53703.

No. MC 140850 (Sub-No. 1TA), filed September 17, 1976. Applicant: JERRY STEWARD TRUCKING, INC., 2512 State St., Cedar Falls, Iowa 50613. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feedstuffs, health aids, and feed ingredients;* (1) between Waterloo, Iowa, on the one hand, and, on the other, points in Nebraska, South Dakota, Minnesota, Wisconsin, Illinois, and Missouri, restricted to traffic originating at or destined to the facilities of Geerlings Feed Mills, Inc., at Waterloo, Iowa; (2) from the facilities of Kent Feeds, Inc., and Grain Processing Corporation, at Muscatine, Iowa, to Marshall, Mo.; (3) from Kansas City, Mo., to the facilities of Kent Feeds, Inc., in Iowa; (4) between Marshall, Mo., on the one hand, and, on the other, points in Kansas, Oklahoma, Arkansas, Nebraska, Iowa and Illinois; (5) between Altoona, Iowa, on the one hand, and, on the other, points in Missouri, Nebraska, Kansas, Minnesota, Wisconsin, and Illinois; and (6) between Waterloo, Iowa, on the one hand, and, on the other, points in Illinois, Wisconsin, Nebraska, Minnesota, and Missouri, for 180 days. Supporting shippers: Geerlings Feed Mills, Inc., 1840 Water St., P.O. Box 179, Waterloo, Iowa 50704, Grain Processing Corporation, Muscatine, Iowa 52761. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 142413 (Sub-No. 2TA), filed September 15, 1976. Applicant: ROBERT STEVEN IRWIN, 422 Connell Road, Valdosta, Ga. 31601. Applicant's representative: John H. Wilbur, 1700 Barnett Bank Bldg., Jacksonville, Fla. 32201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roof and floor joist and accessories* used in their installation, from Valdosta, Ga., to points in Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Tennessee, Kentucky, Ohio, North Carolina, and South Carolina; *Material and supplies* used in construction of roof and floor joist, from points in Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Tennessee, Kentucky, Ohio, North Carolina, and South Carolina, to Valdosta, Ga., restricted to traffic moving on shipper owned trailers, under a continuing contract with Trus Joist Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Trus Joist Corporation, P.O. Box 985, Valdosta, Ga. 31601. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 142422 (Sub-No. 1TA), filed September 17, 1976. Applicant: ALLEN LEBO, doing business as LEBO TRUCKING, 14526 Figueras Road, La Mirada, Calif. 90638. Applicant's representative: Don Erik Franzen, 3550 Wilshire Blvd., No. 1418, Los Angeles, Calif. 90010. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuff, frozen, NOI; foodstuff, chill, NOI and foodstuff, fresh, NOI*, between the Los Angeles, Calif. commercial zone, as defined by the Interstate Commerce Commission, and Davis Monthan Air Force Base, Ariz.; Fort Huachuca, Ariz.; Luke Air Force Base, Ariz.; Fort Apache, Ariz.; Marine Corps Air Station, Yuma, Ariz.; Williams Air Force Base, Ariz.; Yuma Proving Grounds, Ariz.; Phoenix, Ariz.; Tucson, Ariz.; Safford, Ariz.; Florence, Ariz.; Bureau of Indian Affairs, Phoenix, Ariz., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Defense Supply Agency, Defense Subsistence Region, Pacific, Defense Personnel Support Center, 2155 Mariner Square Loop, Alameda, Calif. 94501. Send protests to: Mary A. Francy, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142458 TA, filed September 17, 1976. Applicant: GOLIATH TRACTOR SERVICE LTD., 32 Atlanta Crescent SE., Calgary, Alberta, Canada T2J Oyl. Applicant's representative: Ray F. Koby, 314 Montana Bldg., Great Falls, Mont. 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural fertilizers, herbicides, fungicides, pesticides, insecticides and ingredients thereof*, in ocean going containers, on specially designed wheeled undercarriages, having a prior water-rail move in foreign commerce, from the port of entry on the United States Canada International Boundary Line at or near Sweetgrass, Mont., to points in Yellowstone and Cascade Counties, Mont., for 180 days. Applicant has also filed an

underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. B. Allen, Manager, Pacific Region, Intermodal Services, Canadian Pacific Rail, Suite 500, 999 W. Pender St., Vancouver, B.C. V6C 1L6. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Ave., North, Billings, Mont. 59101.

No. MC 142459 TA, filed September 17, 1976. Applicant: CHARLES B. MCGEE, Route 1, Box 167E, Eagle Creek, Oreg. 97022. Applicant's representative: Charles B. McGee (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty steamship cargo containers*, with or without steamship owned chassis, from Ports of Seattle, Tacoma and Longview, Wash., and Portland, Oreg., to points in Washington, Oregon and Idaho, and from Ports of Seattle, Tacoma and Longview, Wash., to Portland, Oregon, restricted to traffic having a prior or subsequent movement of commodities exempt under Section 203(b)(6) or 203(b)(8) of the Interstate Act, for 180 days. Supporting shippers: United Brokers Company, 318 S.E. E. Alder St., Portland, Oreg. 97214. Spada Distributing Co., Inc., 1137 S.E. Union Ave., Portland, Oregon. 97214. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 S.W. Yamhill St., Portland, Oreg. 97204.

GORDON H. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-28520 Filed 9-28-76;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART II:

FEDERAL ELECTION COMMISSION

■

PRIVACY ACT OF 1974

Implementation

Title 11—Federal Elections

CHAPTER I—FEDERAL ELECTION COMMISSION

[Notice 1976–45]

PART 1—PRIVACY ACT

On August 22, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 36872) to implement the provisions of the Privacy Act of 1974 (P. L. 93–579). The public was invited to submit written comments. Comments were received from the Office of Management and Budget and incorporated in these final regulations.

On August 22, 1975, the Commission also published its Systems of Records as required by the Privacy Act of 1974 (40 FR 36875). The rules promulgated hereunder advise individuals how to obtain their records maintained by the Federal Election Commission as outlined in its Systems of Records.

Effective date: October 29, 1976.

Dated: September 20, 1976.

VERNON THOMSON,
Chairman for the
Federal Election Commission.

Title 11 of the Code of Federal Regulations, Chapter I is amended by adding a new Part 1 to read as follows:

Sec.

AUTHORITY: 5 U.S.C. 552a.

§ 1.1 Purpose and scope.

(a) The purpose of this part is to set forth rules informing the public as to what information is maintained by the Federal Election Commission about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The regulations in this part carry out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) and in particular 5 U.S.C. Section 552a as added by that Act.

(c) The regulations in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. § 552, the Freedom of Information Act, or requests for reports and statements filed with the Federal Election Commission which are public records and available for inspection and copying pursuant to 2 U.S.C. §§ 437g(a)(6)(C) and 438(a)(4).

§ 1.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use or disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

"Systems of Records" means a group of any records under the control of the Federal Election Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

"Routine use" means the use of such record for a purpose compatible with the purpose for which the information was collected.

"Commission" means the Federal Election Committee, its Commissioners and employees.

"Commissioners" means the six appointees confirmed by the Senate who are voting members of the Commission.

"Act" means the Federal Election Campaign Act of 1971, as amended and Chapters 95 and 96 of the Internal Revenue Code of 1954.

§ 1.3 Procedures for requests pertaining to individual records in a record system.

(a) Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made in person or in writing at the location and to the person specified in the notice describing that record system.

(b) An individual who believes that the Commission maintains records pertaining to him or her but who cannot determine which record system contains those records, may request assistance by mail or in person from the Staff Director, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463 during the hours of 9 a.m. to 5:30 p.m.

(c) Requests under paragraphs (a) or (b) of this section shall be acknowledged by the Commission within 15 days from the date of receipt of the request. If the Commission is unable to locate the information requested under paragraphs (a) or (b) of this section, it shall so notify the individual within 15 days after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record or it may advise the individual that no record or document exists about that individual.

§ 1.4 Times, places, and requirements for identification of individuals making requests.

(a) After being informed by the Commission that a record system contains a record pertaining to him or her, an individual may request the Commission to disclose that record in the manner described in this section. Each request for the disclosure of a record or a copy of it shall be made at the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463 and to the system manager identified in the notice describing the systems of records, either in writing or in person. Requests may be made by specifically authorized agents or by parents or guardians of individuals.

(b) Each individual requesting the disclosure of a record or copy of a record shall furnish the following information with his or her request:

(1) The name of the record system containing the record;

(2) Proof as described in paragraph (c) of this section that he or she is the individual to whom the requested record relates;

(3) Any other information required by the notice describing the record system.

(c) Proof of identity as required by paragraph (b)(2) of this section shall be provided as described in paragraph (c)(1) and (2) of this section. Requests made by an agent, parent, or guardian, shall be in accordance with the procedures described in § 1.10.

(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, he or she shall submit adequate proof of identification in the form of a drivers license, birth certificate, passport or other identification acceptable to the notary. If the statement is witnessed, it shall include a sentence above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identification to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identification.

(2) If the request is made in person, the requestor shall submit proof of identification similar to that described in paragraph (c)(1) of this section, acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 1.5 Disclosure of requested information to individuals.

(a) Upon submission of proof of identification as required by § 1.4, the Commission shall allow the individual to see and/or obtain a copy of the requested record or shall send a copy of the record to the individual by registered mail. If the individual requests to see the record, the Commission may make the record available either at the location where the record is maintained or at a place more suitable to the requestor, if possible. The record shall be made available as soon as possible but in no event later than 15 days after proof of identification.

(b) The Commission must furnish each record requested by an individual under this part in a form intelligible to that individual.

(c) If the Commission denies access to a record to an individual, he or she shall be advised of the reason for the denial and advised of the right to judicial review.

(d) Upon request, an individual will be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 1.4.

§ 1.6 Special procedure: medical records. [Reserved]

§ 1.7 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request the Commission to correct or amend all or any part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the Commission through the person who furnished the record.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or corrected or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to correct or amend;

(6) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the correction or amendment sought.

§ 1.8 Agency review of request for correction or amendment of record.

(a) The Commission shall, not later than ten (10) days (excluding Saturdays, Sundays and legal holidays) after the receipt of the request for a correction or amendment of a record under § 1.7, acknowledge receipt of the request and inform the individual whether information is required before the correction or amendment can be considered.

(b) If no additional information is required, within ten (10) days from receipt of the request, the Commission shall either make the requested correction or amendment or notify the individual of its refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 1.9.

(c) The Commission shall make each requested correction or amendment to a record if that correction or amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete matter in the record.

(d) The Commission shall inform prior recipients of any amendment or correction or notation of dispute of such individual's record if an accounting of the disclosure was made. The individual may request a list of prior recipients if an accounting of the disclosure was made.

§ 1.9 Appeal of initial adverse agency determination on amendment or correction.

(a) Any individual whose request for a correction or amendment has been denied in whole or in part, may appeal that decision to the Commissioners no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which that record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the correction or amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and legal holidays) after the date on which the Commission receives the appeal, the Commissioners shall complete their review of the appeal and make a final decision thereon. However, for good cause shown, the Commissioners may extend that thirty (30) day period. If the Commissioners extend the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requestor containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requestor to institute a civil action in a Federal District Court for judicial review of the decision; and

(3) The right of the requestor to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission denial of the correction or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying the requested correction or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record if an accounting of the disclosures was made.

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

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual and notarized or witnessed as provided in § 1.4(c).

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of a court order, or similar documents, and proof of the individual's identity in a form that complies with § 1.4(c) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this part may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 1.11 Fees.

(a) The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the Process of disclosing the record to an individual, the Commission shall not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish a copy of the record, the Commission shall charge the individual for the costs of making the copy. The fee that the Commission has established for making a copy is ten cents ($.10) per page.

§ 1.12 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment or correction thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. §§ 494 and 495.

§ 1.13 General exemptions. [Reserved]

§ 1.14 Specific exemptions.

(a) No individual, under the provisions of these regulations, shall be entitled to access to materials compiled in its systems of records identified as FEC audits and investigations (FEC 2) or FEC compliance actions (FEC 3). These exempted systems relate to the Commission's power to exercise exclusive civil jurisdiction over the enforcement of the

Act under 2 U.S.C. § 437d(a)(6) and (e); and to defend itself in actions filed against it under 2 U.S.C. § 437d(a)(6). Further the Commission has a duty to investigate violations of the Act under 2 U.S.C. § 437g(a)(2); to conduct audits and investigations pursuant to 2 U.S.C. §§ 437d(a)(10), 438(a)(8); 26 U.S.C. §§ 9007 and 9038; and to refer apparent violations of the Act to the Attorney General or other law enforcement authorities under 2 U.S.C. §§ 437g(a)(5) and 438(a)(9). Information contained in FEC systems 2 and 3 contain the working papers of the Commission staff and form the basis for either civil and/or criminal proceedings pursuant to the exercise of the powers and duties of the Commission. These materials must be protected until such time as they are subject to public access under the provision of 2 U.S.C. § 437g(a)(6)(C) or 5 U.S.C. § 552, or other relevant statutes.

(b) The provisions of paragraph (a) of this section shall not apply to the extent that application of the subsection would deny any individual any right, privilege or benefit to which he or she would otherwise be entitled to receive.

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federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART III:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

COINSURANCE FOR STATE HOUSING AGENCIES

Final Regulations

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-396]

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

Final Regulations

On June 4, 1976, at 41 FR 22682, Department of Housing and Urban Development published a proposed rule which would add a new Part 250, 24 CFR so as to implement a multifamily coinsurance program for State Housing Finance Agencies, under the authority of Section 244 of the National Housing Act (12 U.S.C. 1715Z 9), which was added by Section 307 of the Housing and Community Development Act of 1974 (Pub. L. 93-383). Section 244 authorizes the Secretary to insure and make a commitment to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provisions, pursuant to a coinsurance contract providing that the agency will (1) assume a percentage of any loss and (2) carry out (subject to audit, exception or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary approves.

The Department has received 16 responses to its invitation for public comment on the proposed rule, all of which have been reviewed and carefully considered. These comments are discussed below, along with the Department's action on those comments, and the changes made in the proposed rule.

SPECIFIC COMMENTS AND CHANGES

1. *General comments.* Several general comments on the proposed rule were received. One of these comments stated that the program was unfair because it gives state agencies a competitive advantage in the marketplace, especially with the refinancing of existing properties. Although there is no operational multifamily coinsurance program for private lenders, we are working on the design of such a program and intend to propose regulations for this purpose in the near future.

Another comment addressed the statutory requirement of what criteria HUD would use to determine whether or not the implementation of this program would have an effect on the mortgage market. The Department has carefully considered, throughout the comment period and afterward, the potential effect of this program on the mortgage market and the availability of mortgage credit. The Department is convinced that some sort of limitation, at least initially, should be established. It is possible that in some states, the coinsurance program could be used to assist families that have higher income than is appropriate when Federal assistance is involved. In those states, this program will enable the state agencies to invade the domain of private lenders. Therefore, the Department has determined to restrict this program, for the time, to low-income housing. Although it will not be required that coinsured projects be assisted under Section 8 of the U.S. Housing Act of 1937, this program must be used to finance projects having at least 20 percent occupancy by low-income families, where a low-income family is defined as one having an income not greater than 80 percent of the median income in that locality, i.e., the same definition as used in the Section 8 program. The final rule has been changed to include this provision (§ 250.10).

2. *Level of HUD Participation—Section 250.3.* An ongoing concern in this program has been which organizational level of HUD, the Field or the Central Office, would have the responsibility of processing and reviewing the applications of approved agencies. To the maximum extent possible, the program has been designed so that the HUD Central Office has the major programmatic responsibilities. However, there are certain functions which must be completed in the Field Offices. In particular, the determinations under Section 213(d) of the Housing and Community Development Act of 1974 cannot be accomplished in the Central Office nor can they be delegated to the state agencies. The same is true for normal and special environmental clearances under the National Environmental Policy Act of 1969. They must remain the responsibility of HUD and these functions must be completed in the Field Office. The Department realizes, however, the State agencies' concern about this issue, and as many of the processing and review functions will be kept in the Central Office as possible. The final rule reflects these changes.

3. *Certification of an approved agency—Section 250.202.* Several comments were received on the criteria established for approval of a state agency to participate in this program, stating that these criteria were too overbearing or were too vague, which could result in State agencies being subordinated to HUD in this program. The certification requirements required by the Department reflect only what any prudent insurer would require if it were allowing another entity to make certain decisions for it. It is not the Department's intent to subordinate the State agencies to HUD in this program. The intent is to design a coinsurance program which is actuarially sound and which provides for the delegation of as many processing functions as possible to State agencies. However, § 250.202(h) has been changed to provide that any changes in the agency's underwriting and processing procedures must be consistent with these regulations, but such changes do not require the prior approval of the Commissioner.

4. *Initial Application and Monitoring Fees—Section 250.206.* Two comments were received on this section, stating that application and monitoring fees should not be charged by HUD, but if they were, they should be based on a published fee schedule. This section has been deleted in the final rule. However, the Department intends to review this decision in the near future to determine if such fees are appropriate, and if so, what the proper fee structure should be.

5. *Insurance of construction advances—Section 250.305.* One comment maintained that insurance of construction advances should be available as well as insurance of the project upon completion. This has not been changed in the final rule. The discussions surrounding the development and design of this program assumed that insurance of construction advances would not be available, and the mortgage insurance premium reflected this consideration. To make such a significant change at this time would require a restructuring of the program and would result in undue delay in implementing the program.

6. *Mortgage lien.* Section 250.310 was changed to state that all liens other than the insured mortgage must be approved by the agency and the Commissioner. Inadvertently, this provision was omitted in the proposed rule.

7. *Payment requirements—Section 250.312.* One comment was received on this section, maintaining that state agencies should be able to delay amortization beyond the period necessary to obtain sustaining occupancy. The proposed rule was not changed. Any problems arising from units being occupied at a rate slower than originally anticipated will be taken care of by the inclusion of a development cost escrow in the mortgage amount, as described in item 13, below. Second, if this were permitted, it would be tantamount to capitalizing an operating deficit, which would significantly increase the risk for both HUD and the coinsurer by adversely affecting the ratio of mortgage amount to true replacement cost or value.

8. *Maximum Mortgage Interest Rates—Section 250.318.* Several comments were received on this provision. Two comments stated that the Section 8 financing cost contingency should be avaliable for all coinsured mortgages. However, one comment strongly opposed any regulation which would permit an upward change in the interest rate between the commitment and the final closing. The proposed rule has not been changed. The rule already provides that the highest permissible rate may be charged under the HUD-established ceiling, and the comments received have not persuaded the Department that tax-exempt financing should be considered a separate "mortgage market" that requires establishing a separate rate, a rate that may possibly be higher than the rate being charged by lenders who do not obtain funds in the tax-exempt market.

9. *Certificate of nondiscrimination—Sections 250.321 and 250.329.* Two comments were received to the effect that the regulations should provide for the prohibition of sexual discrimination. This has been incorporated in the final rule.

10. *Applicability of prevailing wage requirement—Section 250.328.* One comment was received on this section, stating that it should be made explicit that projects containing less than eight units are not covered by prevailing wage requirements. This has not been changed in the final rule. Section 250.328 is a general requirement applicable to all coinsured mortgages, whether insured under Section 221, Section 236, or Section 223(f) of the National Housing Act. Since these sections have different prevailing wage requirements, reference must be made to the applicable section.

11. *Certificate of actual cost—Section 250.336.* One comment was received which suggested that for cost certification purposes, "the other items of expense approved by the Commissioner" should be permitted to be approved by the agency. This has not been changed in the final rule.

All other expense items will require the prior approval of the Commissioner.

12. *Reduction in mortgage amount—Sections 250.342 and 250.343.* Two comments suggested that any excess mortgage proceeds be permitted to be applied to fund project reserves or such project betterments as the agency may approve. This has not been changed in the final rule as it is not permitted under the statute.

13. *Maximum mortgage amounts—Sections 250.402, 250.413, 250.503, 250.516.* These sections have been changed from the proposed rule. First, the dollar limitations on units insured under Sections 221(d)(3) or (d)(4) were increased to reflect the changes contained in the Housing Authorization Act of 1976 (Pub. L. 94–375). The 1976 Act also provided that development cost escrows or project reserves would be permitted to be included as an allowable item in calculating replacement cost: *Provided,* That such reserves do not exceed the statutory limit of 5 percent of replacement cost. The regulations also reflect this change. In addition, several subsections were added to make this program consistent with our other programs, specifically, maximum mortgage amount limitations based on debt service. Further, one comment suggested that "other costs established by the agency" be excluded from being attributable to dwelling use as well as exterior land improvements (See § 250.402(a)). This was not changed in the final regulations. Section 250.413(b) was changed in the final regulations to establish that one alternative in determining the maximum mortgage amount for mortgages insured pursuant to Section 223(f) would be 90 percent of the value of the project, as estimated by the agency. Originally, this section provided that 90 percent of replacement cost, as determined by the agency, would be used. This was changed to make these regulations consistent with the full insurance Section 223(f) program for State Housing Finance Agencies.

14. *Eligible Projects.* Section 250.415(c) provided that projects less than three years old (eligible for insurance pursuant to Section 223(f) of the National Housing Act) must not have been completed prior to December 31, 1975, to be eligible for coinsurance. The words "but not completed," inadvertently included in the proposed regulations, have been omitted since such a restriction was not intended.

15. *Commercial and community facilities—Sections 250.504 and 250.332.* These sections have been changed to limit the amount of rentable area that may be devoted to commercial and community facilities to 10 percent of the total rentable area, except for elderly projects. A waiver of this restriction is permitted, however.

16. *Interest Reduction Payments Contract—Section 250.704.* One comment suggested that the Section 236 interest reduction payment be permitted to continue beyond the date that the agency notifies the Commissioner of its intent to acquire title (by means other than foreclosure) if the agency presents a plan for the use of such payments. This has not been changed in the final rule as it is not permitted under the statute.

17. *Mortgage Insurance Premiums—Section 250.705.* The setting of the mortgage insurance premium (MIP) has been a much debated issue throughout the development of this program. Several commentors addressed it also. The Department has decided to limit nonprofit and cooperative mortgagors in this program to 90 percent mortgages, the same as for general and limited distribution mortgagors. By limiting nonprofit mortgagors to 90 percent mortgages, the Department is able to charge a lower premium, 0.4 percent, with respect to mortgages to finance new construction or rehabilitation. The final regulations incorporate both of these changes. In addition, we also plan to review all experience under the program at some future date, e.g., a minimum of 4–5 years, to determine if the premiums should be adjusted. If so, they will be changed on a prospective basis only, i.e., for all new mortgages and for future premium payments on existing coinsured projects. Rebates will not be made.

The proposed regulations have been changed to provide that premiums will only be paid annually on a level percentage of the declining principal balance. There has been little interest in paying the premium in any other way. Furthermore, it is administratively simpler to have one payment method.

18. *Special forbearance agreement—Section 250.720.* The terms of the special forbearance agreement have been altered to liberalize the provisions under which the Department will make repayable debt service advances, i.e., the Department will make an advance, not to exceed one-half of the debt service shortfall or 10 percent of the debt service, whichever is lower, as long as the project is meeting 50 percent of the required debt service payment. However, the advance will not be available until the project has been operational for at least one year. In addition, a requirement was added that during the time these advances are being made, all monies received from rents and other sources must go toward paying operating costs, and not dividends. These advances will not be allowed to count against the deductible when calculating a claim. To do so would be to make a loan and then automatically forgive it, i.e., it then becomes a grant.

19. *Amount of claim payment—Section 250.738.* Section 250.738 has been changed to establish that upon acquisition of title to the property, the agency is entitled to receive 60 percent of the difference between the appraised value of the property, and the outstanding mortgage amount. To try to estimate the various additions and subtractions to these amounts is very difficult. Furthermore, the preliminary claim payment can be paid more quickly if a simple calculation is made. In addition, the appraisal of the property must be made on the basis of its highest and best use unless the property will continue to be utilized as subsidized housing. The 60 percent immediate payment is not intended to be precisely 75 percent of the ultimate claim payment (60 percent divided by 80 percent, HUD's risk-sharing percentage), and therefore, the various additions to and subtractions from the payment, as listed in §§ 250.740 and 250.741 are not included. The purpose is to provide an early payment for use by the agencies, with the precise claim amount being determined upon either disposition of the property or within 12 months of acquisition, whichever comes first.

20. *Items included in claim payments—Section 250.740.* A number of comments were received on this section. Three of the comments suggested that contract interest, and not debenture interest, should be paid from the date of default to the date of acquisition. This has not been changed in the final rule. By paying mortgage interest during this period, there is little incentive for an agency to either try to cure the default, or if the default is not curable, to acquire the project. Three of the comments also maintained that all foreclosure costs should be included in the claim as well as all actual costs incurred by the agency in prepaying the bonds. The Department sees no persuasive basis for providing greater coverage, or coverage of additional risks, under a coinsurance program than under the comparable full insurance program.

21. *Items deducted from claim payment—Section 250.741.* The proposed rules neglected to provide that if the project was not sold within 12 months after acquisition, the appraised value of the property would be used as the surrogate sales price. This has been included. Two comments on this section suggested that § 250.741(f) be modified to permit the deduction of the actual net proceeds from a negotiated sale even if such proceeds are less than the appraised value. We have not changed the proposed rule in this regard. To do so would appear to lessen the usefulness of establishing an appraised value as a floor and would not encourage obtaining the best sales price

commensurate with the use of the property.

22. Section 250.417, Secondary Financing, was added since the publication of the proposed regulations. This was done to make the Section 223(f)/coinsurance provisions consistent with the Section 223(f) fully insured program.

23. Section 250.331, Development of Property, was amended to provide that a coinsured project must consist of at least five dwelling units. This was inadvertently omitted in the proposed regulations.

24. Late payments will be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment, as provided in § 250.317. Section 250.312(a)(5) was deleted.

25. Sections 240.413 (c) and (d) were amended to provide that estimated repair costs, if any, are to be included for the purposes of determining the maximum mortgage amount in Section 223(f) projects that are to be refinanced or acquired. This was also inadvertently omitted from the proposed regulations.

As mentioned above, one change which the Department has decided to implement since the publication of the proposed regulations is to limit nonprofit and cooperative mortgagors to 90 percent mortgages, the same amount allowed a general or limited distribution mortgagor. Limiting nonprofit and cooperative mortgagors to 90 percent mortgages should help reduce HUD's risk exposure substantially as equity investment is perceived to reduce risk. In addition, as an experimental program, the Department considers that 90 percent of replacement cost is the highest loan-to-value ratio that should be accepted, taking into consideration that there is already an inherent risk in accepting different processing methods and accepting development cost escrows as a replacement cost item.

When the Department and the State Housing Finance Agencies first began developing this program, it was decided that the program should be run on a portfolio basis, and not on a single mortgage basis. This was done at the request of the state agencies, who maintained that such an arrangement would assist them in marketing their bonds.

Since that time, there has been some disenchantment with the portfolio approach. Many of the smaller state agencies complained that they could not satisfy the requirement that a portfolio consist of ten mortgages. Therefore, the proposed regulations provided that state agencies could participate in the program with less than ten mortgages, allowing them to increase the size of the portfolio until it consisted of at least ten mortgages. The final rule has been changed to allow portfolios of any size, e.g., one mortgage, two mortgages, three mortgages, etc. State agencies will be free to submit portfolios of any size for coinsurance, and need not add subsequent coinsured mortgages to a portfolio. Thus, an agency may elect to treat each mortgage as a separate portfolio, all mortgages may be placed in a single portfolio, or an agency may elect to have a number of separate portfolios of varying sizes with portfolio deductibles determined in accordance with the schedule established in § 250.733. For single mortgage portfolios, the deductible will be 10 percent of the outstanding principal balance in the portfolio. This decreases to 3 percent for portfolios with ten or more mortgages.

The most discussed and commented upon provision of the coinsurance program has been the risk-sharing formula. The proposed regulations offered a formula whereby, after assuming an initial deductible amount, State agencies would incur 20 percent of any subsequent losses, with the Department incurring the remaining 80 percent. This has not been changed in the final rule. The Department considers it mandatory that State agencies, as coinsurers, incur a signficant, yet market-acceptable, amount of risk, in order to encourage proper processing, underwriting and property disposition decisions. As mentioned above, State agencies may include a development cost escrow or project reserve, up to 5 percent of replacement cost, in the mortgage amount. If the Department were to significantly decrease the loss-sharing percentage that the State agencies must bear, this percentage, in conjunction with the 5 percent development cost escrow, could become so small that its effect on State agency processing and underwriting decisions and property disposition functions could be minor, negating the intent of the coinsurance concept. As with other provisions of the coinsurance program design the Department will closely monitor the risk-sharing formula and its effect on program activity, to determine whether any changes in it should be made, and how such a change would impact upon other provisions of the program, the mortgage insurance premium, for instance.

The Department has determined that these regulations will not have an environmental impact, as defined in HUD Handbook 1390.1. The finding of inapplicability may be inspected during regular business hours in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C.

NOTE.—It is hereby certified that the economic and inflationary impacts of these regulations have been carefully evaluated in accordance with OMB Circular No. A-107.

Accordingly, Chapter II, Subchapter B of Title 24 of the Code of Federal Regulations is amended by adding a new Part 250 to provide as set forth below:

Subpart A—General Provisions

Subpart B—Certification of a State Housing Agency as an Approved Agency

Subpart C—Eligibility Requirements Applicable to All Mortgages To Be Coinsured

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

Subpart A—General Provisions

§ 250.1 Purpose.

(a) Section 307 of the Housing and Community Development Act of 1974 amended the National Housing Act by adding a new section 244 entitled Coinsurance. Section 244 authorizes the Secretary of Housing and Urban Development to insure and make a commitment to insure, under any provision of Title II of the National Housing Act, any mortgage otherwise eligible for insurance under such provisions, pursuant to a coinsurance contract providing that the agency will (1) assume a percentage of any loss and (2) carry out (subject to audit, exception, or review requirements) such credit approval, appraisal, inspection, commitment, property disposition, or other functions as the Secretary approves.

(b) By placing some of the risks which HUD now assumes when insuring mortgages on approved State Housing Agencies the demonstration program authorized by section 244 of the National Housing Act could help to assure more careful initial evaluation of insured projects by lenders who are willing to accept some, but are unwilling to accept all, of the risk of mortgage lending for rental housing projects which are intended to be made available for occupancy by low and moderate income families and which receive the benefits of various federal or State subsidy or assistance programs which help to reduce the monthly rentals for tenants. It could also make feasible assumption by lenders of the processing responsibilities incidental to a mortgage insurance program and perhaps reduce the present length of time required to approve applications for mortgage insurance.

(c) Congress, in enacting the legislation authorizing the program implementing this part, made clear that it was concerned that implementation of this program not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend on mortgage insurance. The Congress also indicated its concern that in delegating mortgage insurance processing duties to lenders, physical inspections of new dwelling units be continued in accordance with the same standards used under the regular HUD programs. To accord with these concepts, this part sets forth the Department's regulations describing a coinsurance program for mortgages on multifamily projects underwritten by State Housing Agencies. These agencies have made significant contributions toward providing rental housing for families of low and moderate income over the last several years. Recently, however, State Housing Agencies have experienced problems in selling the volume of notes and bonds necessary to support their programs at reasonable interest rates.

(d) The primary purpose of this program is for HUD to assume some of the exposure of the multifamily loans made by State Housing Agencies, thereby reducing the perceived risks to investors and increasing the agencies' access to capital markets. At the same time use of this program will enable the Department of Housing and Urban Development to develop experience under provisions for delegations of processing and risk sharing which will be reported to the Congress as required under Section 244. In recognition of the capabilities of State Housing Agencies, their successful operating histories and their accountability to their individual State governments, these regulations vest the maximum amount of processing responsibilities with these agencies, and to the maximum extent permissible under the statutes authorizing this program, permit these agencies to retain autonomy in their underwriting practices. In such a manner, the Federal interest will be safeguarded and the State Housing Agencies will be able to continue to produce housing in substantial volume.

(e) The authority for the program to be implemented by this part expires on June 30, 1977. No mortgage shall be insured pursuant to this part after the Secretary's authority to insure pursuant to this part shall have expired, except pursuant to a commitment to insure made before that date.

§ 250.2 Definition of state housing agency.

As used in this part, the term "State Housing Agency", or "Agency" means any public body, agency, or instrumentality created by a specific act of a state legislature and empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction, or rehabilitation, for persons and families of low and moderate income.

§ 250.3 Approved agency.

An approved agency under this part must be a State Housing Agency certified as eligible to underwrite mortgages for coinsurance as provided in § 250.202. The HUD Central Office shall have sole responsibility for the processing and review of applications of approved agencies pursuant to the requirements of this part, except to the extent that Field Office processing and review is required for determinations under Section 213(d) of the 1974 Act and for environmental review.

§ 250.4 Effect of implementation of program on mortgage market.

Section 244 of the National Housing Act requires that no contract of coinsurance will be entered into under this part until the Secretary, has, after due consultation with the mortgage lending industry, determined that a program for State House Finance Agencies, as authorized by Section 244, will not disrupt the mortgage market or reduce the availability of mortgage credit to borrowers who depend upon mortgage insurance provided under provisions of the National Housing Act other than Section 244. The mortgage lending industry has received adequate opportunity through the public comment period to make its views known and the issuance of these regulations shall be considered a determination that no adverse effects on the mortgage market are reasonably predictable from such issuance. The Department intends, however, to continuously monitor the impact of this program and to consider evidence submitted at any time which would tend to suggest that disruptions in the mortgage market or reduced availability of mortgage credit to borrowers is causally related to the availability of coinsurance under this part.

§ 250.5 Utilization of existing multifamily insurance authorities.

With respect to mortgages covering projects to be constructed or rehabilitated after an application for coinsurance under this part is filed, mortgage insurance will be provided under Section 221(d)(3), 221(d)(4), or 236 of the National Housing Act and the regulations implementing those sections as set forth in this part. With respect to mortgages covering completed projects, mortgage insurance will be provided pursuant to Section 223(f), under Sections 221(d)(3), 221(d)(4), and Section 236 of the National Housing Act and the regulations implementing those sections as set forth in this part. Any mortgage assisted through the Section 8 Housing Assistance Payments Program and insured pursuant to this part, may be processed by the agency for Section 8 assistance in accordance with all provisions of 24 CFR Part 883.

§ 250.6 Effect of availability of coinsurance.

No insurance authorized under any provision of the National Housing Act other than Section 244 of that Act shall be withdrawn, denied, or delayed by reason of the availability of insurance under the program authorized by this part.

§ 250.7 Effect of availability of coinsurance on flow of mortgage credit to older, declining areas.

Insurance will continue to be available under this part only to the extent the Secretary has determined that the availability of insurance authorized by this part does not adversely effect the flow of mortgage credit to older, declining areas and to the purchasers of older and lower-cost housing.

§ 250.8 Coinsurance pursuant to section 223(e) not available.

Insurance authorized by this part will not be available for mortgages on properties which are eligible to be insured solely pursuant to the authority of Section 223(e) of the National Housing Act.

§ 250.9 Safeguards for consumers.

(a) The inspection of construction on projects covered by mortgages approved for coinsurance prior to the beginning of construction under this part shall be conducted in accordance with the standards and criteria set forth in Subpart S of Part 200 of this chapter and used with respect to dwellings or projects approved for mortgage insurance under provisions of Title II of the National Housing Act other than Section 244.

(b) The National Environmental Policy Act of 1969, as amended, is applicable to major Federal actions proposed pursuant to this part. The Secretary may make appropriate provision for the delegation to a State agency of preparation of any detailed statement required pursuant to Section 102(2)(C) of that statute. However, final responsibility for making determinations related to environmental impact which are not delegable under the National Environmental Policy Act of 1969 has been retained by the Department of Housing and Urban Development.

§ 250.10 Eligible projects.

Projects to be constructed or rehabilitated after an application for coinsurance under this part is filed or completed projects are eligible for coinsurance under this part. To be eligible for mortgage insurance under this part, for projects to be constructed or rehabilitated after the coinsurance application is filed, project mortgage applications shall provide evidence that the benefits of a federal, state or local program will permit at least 20 percent of the units to be occupied by families whose income does not exceed 80 percent of the median income for the area, with adjustments for smaller or larger families.

Subpart B—Certification of a State Housing Agency as an Approved Agency

§ 250.201 Review of state agency prior to certification as an approved agency.

Certification of a State Housing Agency as an approved agency, eligible to underwrite and service mortgages on multi-family projects for coinsurance, will be made after an on-site review of the Agency's operations by HUD. This review will cover the adequacy of the Agency's technical staff, procedures for screening and processing applications for mortgage insurance, and the Agency's capability to service such mortgages and supervise project management.

§ 250.202 Certification as an approved agency.

A State Housing Agency whose technical staff and procedures for screening and processing applications have been deemed satisfactory after the review required by § 250.201 and meeting the following special requirements may be certified as an approved agency eligible to underwrite mortgages on multifamily projects under this part:

(a) It shall provide a written opinion of its Counsel that it has the necessary powers under State law to participate in the program authorized under this part;

(b) It shall submit evidence to the Commissioner that its assets are properly proportioned to its liabilities and are adequate for, and invested properly in relation to, the character and extent of its intended operations;

(c) It shall submit evidence to the Commissioner that it has established procedures for discharging full underwriting, servicing and property disposition functions in a manner which is not inconsistent with the requirements of this part;

(d) It shall submit to periodic auditing and review by the Commissioner or the Comptroller General of the United States with respect to its participation in the program authorized by this part;

(e) It shall submit its most recent detailed audit report of its books made by an independent certified public account selected in accordance with applicable State law or procedures supplemented by such additional financial information as the Commissioner shall requent;

(f) It shall file with the Commissioner similar annual audits within (1) such period of time required pursuant to agency statute and procedures or (2) within 150 days of the closing of its fiscal year so long as its approval as an approved agency continues;

(g) It shall have the capability, either through technical staff employed by it, or through contracts with persons outside of the agency, to discharge full mortgage underwriting, servicing and property disposition functions;

(h) It shall promptly notify the Commissioner of any changes in its processing procedures which take place after its certification as an approved agency, and shall make no changes in its processing procedures which the Commissioner determines are inconsistent with the requirements of this part;

(i) It shall have in its immediate employ a technical staff consisting of at least one individual who is knowledgeable in the area of construction, one in underwriting skills and one who is skilled in the management of multifamily projects;

(j) It shall have in its immediate employ staff with sufficient professional and technical competence to monitor the performance of any work it contracts to have done by persons outside the agency such as appraisals, costs, architectual, engineering and management services;

(k) All appraisers used by the agency to evaluate coinsured mortgages must adhere to minimum standards of education and experience established by the Commissioner.

§ 250.203 Duration of approval.

Initial certification of a State Agency as an approved agency under § 250.202 will be valid until the Secretary's authority to coinsure pursuant to this part shall have expired, unless such approval is withdrawn pursuant to the provisions of § 250.204.

§ 250.204 Withdrawal of approval.

The Commissioner may refrain from issuing a commitment for mortgage insurance authorized by this part with respect to any project proposed for coinsurance by an agency which has been given written notice by the Commissioner that its certification as an approved agency under this part may be suspended or withdrawn. Certification as an approved agency under this part may be suspended or withdrawn pursuant to the provisions of Part 24 of this title for any of the following causes:

(a) Failure to maintain satisfactory capital funds or structure;

(b) Failure to perform underwriting, servicing, or property disposition functions consistent with the requirements of this part;

(c) Failure to discharge responsibilities under a contract for coinsurance;

(d) The transfer of a coinsured mortgage to an agency not approved under this part;

(e) The failure to segregate all escrow funds received from mortgagors on account of ground rents, taxes, assessments and insurance premiums, and to deposit such funds to a special account or accounts;

(f) The use of escrow funds for any purpose other than that for which they were received;

(g) The payment by the agency of any fee, kickback, or other consideration, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person including an attorney, escrow agent, title company, consultant, mortgage broker, seller, builder, or real estate agent if such person has received any other payment or other consideration from the mortgagor, the seller, the builder, or any other person for services related to such transaction or transactions or from or related to the purchase or sale of the mortgaged property, except that compensation may be paid for the actual performance of such services as may be approved by the Commissioner.

(h) Such other reason as the Commissioner determines to be justified.

§ 250.205 Effect of withdrawal of certification as an approved agency on insurance commitments made by the agency while it was approved.

Withdrawal or termination of a State Housing Agency's certification as an approved agency under this part will not affect any mortgage insurance commitment issued while the Agency was an approved agency or the insurance on mortgages accepted for insurance while the Agency was an approved agency.

§ 250.207 Mortgage servicing during coinsurance period.

Servicing functions during the period when the Commissioner is a coinsurer of the mortgage shall be performed only by the agency, except that the agency may elect to delegate servicing to another entity if the agency retains its obligations under this part.

§ 250.208 Required regulatory agreement with mortgagors.

(a) The agency and the mortgagor shall effect an agreement whereby the mortgagor, as further consideration for the making of the mortgage loan, contracts with the agency and with the Commissioner that it will fulfill the provisions of Subpart C, §§ 250.322 through 250.327. Such regulation or restriction will be in the form of a regulatory contract between the mortgagor and the agency which shall be responsible for enforcing the provisions of the regulatory contract.

(b) Further, the agency may regulate and restrict the mortgagor, as long as the Commissioner and the agency are coinsurers of the mortgage, on such other matters as may be required by the mortgagee as conditions for lending which do not conflict with the requirements of the Commissioner under this part.

Subpart C—Eligibility Requirements Applicable to All Mortgages To Be Coinsured

§ 250.301 Application.

The application for a commitment to make a coinsured mortgage loan on a project shall be submitted to the agency by the sponsor of such project accompanied by such exhibits as may be required by the agency to enable the agency to comply with requirements for coinsurance of the mortgage established under this part. An application for a commitment to make a mortgage loan may be required by the agency prior to the submission of the application contemplating mortgage insurance.

§ 250.302 Application fees, inspection fees, and service charges.

The agency may collect from the mortgagor such application fees, inspection fees, and initial service charges as it may require to reimburse itself for the cost of processing an application, conducting inspections, and closing a mortgage transaction. The amount of such fees and charges incident to construction, which may be included in the computation of the value or replacement cost of the project upon which the maximum mortgage amount will be determined, shall not exceed 3 percent of the value or replacement cost of such project.

§ 250.305 Processing and commitment.

The agency shall perform all of the processing and make all of the determinations of the eligibility of a mortgage for coinsurance under this Part except for the determinations required under Section 213(d) of the Housing and Community Development Act of 1974 and those determinations related to environmental impact which are not delegable under the National Environmental Policy Act of 1969, and, upon completion of such processing and determinations, shall submit to the Commissioner a request for issuance of a commitment for mortgage insurance, which application shall be acted upon by the Commissioner and returned to the agency promptly. A commitment to insure issued by the Commissioner shall be based upon certifications made by the agency as to its compliance with the requirements of this part. A commitment to insure upon completion shall be effective for 18 months within which period the mortgagor is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period as determined by the agency. The term of a commitment may be extended or may be amended in such manner as the agency may prescribe from time to time pursuant to an application to the Commissioner for such extension or amendment of said commitment, which application shall be acted upon by the Commissioner and returned to the agency promptly after receipt thereof. An expired commitment may be reopened if a request for reopening is received by the agency from the mortgagor within 90 days of the expiration of the commitment and the Commissioner shall act upon the application for reopening of such expired commitment in the manner prescribed for amendment or extension of commitments herein above set forth. Upon completion of construction and receipt by the Commissioner of the agency's certification that the terms and conditions of the commitment for coinsurance have been satisfied, the Commissioner shall, promptly after receipt of application, issue a Mortgage Insurance Certificate for the mortgage: *Provided*, That the requirements of § 250.703 have been met.

Eligible Mortgages

§ 250.309 Mortgage form.

(a) The mortgage shall be executed on the agency's form as approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) In the case of cooperative mortgagors, the mortgage shall provide that the mortgagor will not arrange for management of the property except in the manner and under an agreement approved by the agency and the Commissioner in writing.

§ 250.310 Mortgage lien.

A mortgagor shall certify at final endorsement of the loan for insurance and the agency shall determine that:

(a) The property covered by the mortgage is free and clear of all liens other than the insured mortgage and such other liens as may be approved by the agency and the Commissioner. Liens other than the insured mortgage which may be approved (other than liens for taxes and assessments of the State or subdivisions of the State not yet due and payable, or ground rents) may not have under applicable law a priority equal or superior to the insured mortgage.

(b) There will not be outstanding any unpaid obligation contracted for in connection with the mortgage transaction, the purchase of the mortgaged property, or the construction of the project, except obligations approved by the agency and the Commissioner. Obligations of the mortgagor shall be approved under this section only if such obligations are determined to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 250.311 Maturity.

The mortgage shall have a maturity satisfactory to the agency, not in excess of 40 years from commencement of amortization or for such longer term as may be approved by the Commissioner.

§ 250.312 Payment requirements.

(a) *Method of payment.* The mortgage shall provide for monthly payments on the first day of each month on account of interest and principal and shall provide for payments in accordance with an amortization plan as agreed upon by the mortgagor, the agency and the Commissioner.

(b) *Date of first payment to principal.* The agency shall estimate the time necessary to complete the project and shall establish pursuant to standards adopted by the agency the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than that deemed necessary and appropriate by the agency to obtain sustaining occupancy. In the case of mortgages insured under Section 223 (f), the date of first payment to principal shall be the first day of the second month following the date of initial-final endorsement of the mortgage for insurance.

§ 250.312a Application of mortgage payments.

The mortgage shall provide that all monthly payments being made by the mortgagor to the agency shall be added together and the aggregate thereof shall be paid by the mortgagor upon each monthly payment date in a single payment. The agency shall apply all payments received from the mortgagor or for the account of the mortgagor to the following items in the order set forth:

(a) Premium charges under the contract of insurance, where applicable.

(b) Ground rents, taxes, special assessments and fire and other hazard insurance premiums.

(c) Interest on the mortgage.

(d) Amortization of the principal of the mortgage.

§ 250.313 Mortgage to cover the entire property.

The mortgage shall cover the entire property included in the housing project.

§ 250.314 Covenant for hazard insurance.

The mortgage shall contain a covenant acceptable to the Commissioner binding the mortgagor to keep the property insured by a standard policy or policies against loss from fire and such other hazards as the agency, upon the insurance of the mortgage, may stipulate, in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment of the project. The initial coverage shall be in amount estimated by the agency at the time of completion of the entire project or units therefor. The policies evidencing such insurance shall have attached thereto a standard mortgagee clause making loss payable to the agency and the Commissioner, as their interests may appear.

§ 250.315 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the agency on each interest payment date of an amount sufficient to accumulate in the hands of the agency one payment period prior to its due date, the next annual mortgage insurance premium. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the agency as will amortize the ground rents, if any, and the estimated amount of all taxes, water rates and special assessments, if any, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage must also make provision for adjustments, in case the estimated amount of such taxes, water rates and assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the mortgagor.

§ 250.316 Prepayment privileges.

The mortgage may establish such conditions or penalties for prepayment as may be agreed upon by the agency and mortgagor.

§ 250.317 Late charge.

The mortgage may provide for the collection by the agency of a late charge, not to exceed 2 cents for each dollar, of each payment to interest and principal more than 15 days in arrears, or such other charges as may be agreed to by the agency and the Commissioner, to cover the extra expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

§ 250.318 Maximum mortgage interest rate.

(a) On and after September 2, 1975, the maximum interest rate on which commitments to insure shall be issued shall not exceed 9 percent per annum.

(b) The insured mortgage shall bear interest at such rate as may be agreed upon by the mortgagor and the agency but such rate shall not exceed the rate specified in the commitment to insure. At the request of the agency, the Commissioner will issue an amended commitment to insure at a higher or lower interest rate. If a request is for a commitment to insure at a higher rate, such higher rate shall not exceed the maximum rate in effect at the time of the request which shall be no later than the date that the mortgage is endorsed for insurance. The agency shall only request a commitment to insure a mortgage at a higher rate than that specified in the original commitment to insure if it is determined by the agency that the project which is the security for the mortgage will be able to charge the increased rentals required to amortize a mortgage at the higher rate without adversely affecting the economic soundness of the project.

§ 250.320 Loans to cover 2-year operating loss.

(a) *Operating loss determination.* When the agency determines that an operating loss has occurred during the first two full years following completion of the project, it may, in its discretion, make a loan to cover such loss which shall be eligible for insurance under this part. For the purposes of this section, an operating loss shall occur when the agency determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project (excluding depreciation) exceeds the project income for the first two full years following the date upon which the agency determined the project was substantially completed.

(b) *Security instrument.* The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(c) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the agency and mortgagor, but in no case shall such rate exceed the highest mortgage interest rate provided for under this part on the date the commitment is issued. Interest shall be payable in monthly installments on the principal then outstanding.

§ 250.321 Mortgagor's certificate of nondiscrimination and mortgage covenant regarding use of property.

(a) The mortgagor shall certify to the agency as to each of the following points:

(1) That neither he (it), nor anyone authorized to act for him (it), will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny any part of the property covered by the mortgage to any person because of race, color, sex, religion, or national origin.

(2) That any restrictive covenant on such property relating to race, color, sex, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(3) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(b) The mortgage shall contain a covenant prohibiting the use of the property covered thereby for any purpose other than that for which it was intended at date the mortgage was executed.

SUPERVISION OF MORTGAGORS

§ 250.322 Regulation of mortgagors.

The mortgagor and the agency may agree to such regulation and restriction of the actions of the mortgagor by the agency as they deem desirable: *Provided*, That the requirements set forth in §§ 250.323, 250.324, 250.325, 250.326 and 250.327 are adhered to.

§ 250.323 Supervision applicable to all mortgagors.

(a) No charge shall be made by the mortgagor for accommodations, facilities, or services offered by the project except those approved in writing by the agency.

(b) The mortgagor shall maintain its project, the ground, buildings, and equipment appurtenant thereto, in good repair and will promptly complete necessary repairs and maintenance as required by the agency.

(c) In all projects a fund for replacements shall be established and maintained with the agency. The amount and type of such fund and the conditions under which it shall be accumulated, replenished, and used, shall be specified in the charter, trust agreement, or regulatory agreement.

(d) The mortgagor, its property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and papers shall be subject to inspection and examination by the agency, the Commissioner, and the Comptroller General of the United States or their duly authorized agents at all reasonable times.

(e) The mortgagor shall execute and deliver to the agency a certificate that the books and accounts of the mortgagor will be established and maintained in a manner satisfactory to the agency on the date the certificate is executed. So long as the mortgage is coinsured under this part, the mortgagor's books and accounts will be kept in accordance with the requirements of the agency; will be in such form as to permit a speedy and effective audit and as may otherwise be prescribed by the agency; will be maintained for such periods of time as may be prescribed by the agency; and will be available to the agency, and to the Commissioner and to the Comptroller General of the United States for such examination and audit as they may desire to make. The mortgagor shall file with the agency the following reports verified by the signature of such officers of the mortgagor as the agency may designate and in such form as prescribed by the agency.

(1) Monthly occupancy reports as required by the agency.

(2) Complete annual financial reports based upon examinations of the books and records of the mortgagor, prepared in accordance with the requirements of the agency, certified to by an officer of the mortgagor and, when required by the agency, prepared and certified by a Certified Public Accountant, or other public accountant acceptable to the agency.

(3) Specific answers to questions upon which information is desired from time to time relative to the actual cost of construction, the disposition of mortgage funds, the operation and condition of the property and the status of the coinsured mortgage.

(4) Properly certified copies of minutes of meetings of directors, officers, stockholders, shareholders, or beneficiaries.

§ 250.324 Supervision applicable to general mortgagors.

General mortgagors may include mortgagors which under State law or rules are required to be limited or regulated as to rates of return or distribution of profits, but which are not required to be so limited or regulated under the provisions of Section 221(d)(4) of the National Housing Act if the mortgage is insured under that section. The following restrictions and regulations will be applicable to general mortgagors:

(a) *Capital structure.* (1) The number of shares of capital stock, in the case of a corporation, may be issued in such amounts and form as may be agreed upon by the sponsors and the agency prior to the endorsement of the mortgage for insurance; and

(2) In the case of a trust entity, beneficial certificates of interest, or, in the case of a partnership, participations therein may be issued in such amounts and form as may be agreed upon by the mortgagor and the agency.

(b) *Distribution of earnings.* Dividends or other distributions, as defined in the charter, trust agreement, or regulatory agreement, may be declared or made only as of or after the end of a semiannual or annual fiscal period. No dividends or other distributions shall be declared or made except out of surplus cash legally available and remaining after the payment of and segregation of such funds as determined by the applicable laws and procedures of the agency.

(c) *Borrowed funds.* No distribution of any kind may be made from borrowed funds.

(d) *Rents and charges.* In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a reasonable return on the investment consistent with providing reasonable rentals to tenants.

§ 250.325 Supervision applicable to limited distribution mortgagors.

(a) *Rate of return.* The amount of any allowable distribution or disbursement from surplus cash generated by the mortgagor will not exceed in any one fiscal year more than such percentage of the mortgagor's initial equity investment as agreed to by the agency and the Commissioner. The right of allowable distribution or disbursement from surplus cash may be cumulative. Dividends or other distributions may be declared or made only as of or after the end of a semiannual fiscal period. No dividends or other distribution shall be declared or made except out of surplus cash and pursuant to applicable laws and procedures of the agency. The requirements of this section are applicable only with respect to mortgages insured under Sections 221 (d)(3) or 236 of the National Housing Act.

(b) *Rents and charges.* In approving the allowable rents and charges and in passing upon applications for changes, consideration will be given by the agency to the following and similar factors:

(1) Rental income necessary to maintain the economic soundness of the project.

(2) Rental income necessary to provide a rate of return on the investment not exceeding the rate limitation of paragraph (a) of this section, and consistent with providing reasonable rentals to tenants.

(c) *Borrowed funds.* No distribution of any kind may be made from borrowed funds.

§ 250.326 Supervision applicable to cooperative mortgagors.

(a) The mortgagor shall not permit occupancy except under an occupancy agreement or lease approved by the agency.

(b) Except with the prior written approval of the agency, no compensation shall be paid by the corporation to its officers or directors, as such, or to any person or corporation for supervising or managerial service. No compensation shall be paid by the corporation to any employee in excess of an amount agreed to by the agency, and specified in the charter. No officer, director, stockholder, agent, or employee of the corporation shall in any manner become indebted to the corporation except on account of approved occupancy charges.

(c) A general operating reserve shall be established and maintained as long as the agency is coinsured under this Part in a manner and for the purposes specified in the charter or regulatory agreement.

(d) Surplus funds, after meeting reserves and after meeting all obligations of the mortgagor, may be disbursed to the members in the form of reduced carrying charges or reduced sales prices of the dwelling accommodations, or, patronage refunds.

§ 250.327 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the agency that so long as the mortgage is coinsured under this part that the mortgagor will not:

(a) In selecting tenants for the project covered by the mortgage, discriminate against any family by reason of the fact that there are children in the family unless the project was designed expressly for occupancy by elderly patrons;

(b) Rent, permit the rental or permit the offering for rental of the housing, or any part thereof, covered by such mortgage, for transient or hotel purposes. For the purposes of this certificate, the term rental for transient or hotel purposes shall mean (1) rental for any period less than 30 days, or (2) any rental, if the occupants of the housing accommodations are provided customery hotel services, such as room service for food and beverages, maid service, furnishing and laundering of linens, and bellboy service;

(c) Sell the project as long as the mortgage is coinsured under this part, unless the purchaser also certifies under oath as is required by paragraphs (a) and (b) of this section.

(d) *Preference for displacees.* A preference or priority of opportunity to rent dwelling units shall be given to families or single persons who have been displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster.

PREVAILING WAGE REQUIREMENTS

§ 250.328 Applicability of prevailing wage requirements.

(a) *In general.* Prevailing wage requirements shall be applicable to a mortgage insured under this part, except those specified in paragraph (b) of this section, and compliance with such requirements shall be evidenced at such time and in such manner as the Commissioner may prescribe, as follows:

(1) *Labor standards.* Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations of the Secretary of Labor issued May 9, 1951, 29 CFR 5.1–5.12 (16 F.R. 4430).

(2) *Ineligible contractors.* No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General pursuant to § 5.6(b) of the Regulations of the Secretary of Labor, issued May 9, 1951, 29 CFR 5.6(b) (16 F.R. 4431).

(b) *Excepted transactions.* The requirements of paragraph (a) of this section shall not be applicable to a project insured pursuant to section 223(f) or where, in connection with the construction of a project involving a cooperative, the agency and the Commissioner have waived the requirements and each of the following circumstance occur:

(1) The laborers or mechanics not otherwise employed in the construction of such project are to voluntarily donate their services without compensation for the purpose of lowering their housing costs in the project.

(2) The mortgagor establishes to the satisfaction of the agency and the Commissioner that amounts saved by the donated services will be credited to the account of the mortgagor.

§ 250.329 Discrimination prohibited.

Any contract or subcontract executed for the performance of construction of the project shall contain a provision that there shall be no discrimination against any employee, or applicant for employment because of race, color, sex, creed, or national origin. Where the mortgagor is the general contractor, the building loan agreement shall contain the above provisions.

PROPERTY REQUIREMENTS

§ 250.330 Eligibility of property.

(a) A mortgage to be eligible for insurance shall be on real estate held:

(1) In fee simple; or

(2) On the interest of the lessee under a lease for not less than the term of the mortgage where the interest of the fee owner of the real estate is subordinate to the interest of the agency; or

(3) Under a lease having a period of not less than seventy-five years to run from the date the mortgage is executed; or

(4) Under a lease executed by a governmental agency, or such other lessor as the Commissioner may approve for the maximum term consistent with the legal authority for the execution of such lease: *Provided*, That the term of any such lease shall run for a period of not less than 50 years from the date the mortgage is executed.

(b) The property constituting security for the mortgage must be held by an eligible mortgagor as herein defined and must at the time the mortgage is insured be free and clear of other liens except those approved by the agency.

PROPERTY REQUIREMENTS

§ 250.331 Development of property.

(a) *Obligation of the mortgagor.* The mortgagor shall be obligated to either construct and complete new housing accommodations on the mortgaged property or rehabilitate existing housing accommodations designed principally for residential use or purchase or refinance existing housing. The property, including improvements, shall comply with any material zoning or deed restrictions applicable to the project site and with all applicable building and other governmental regulations.

(b) *Minimum number of units.* A project shall consist of not less than five dwelling units.

§ 250.332 Commercial and community facilities.

(a) The project may include only such commercial and community facilities as the agency determines will be adequate and appropriate to serve the occupants, and such additional facilities permitted under the provision of the National Housing Act pursuant to which coinsurance is being provided, as may be agreed to by the Commissioner and the agency. Except for housing for the elderly or handicapped, in no event shall net rentable commercial area exceed 10 percent of the total net rentable area, both commercial and residential. Notwithstanding the above, this limitation may be waived, for good cause, by the Commissioner.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include such related facilities as cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities and other essential service facilities for use by elderly or handicapped families.

COST CERTIFICATION REQUIREMENTS

§ 250.333 Certification of cost requirements.

(a) Prior to disbursement of any part of the construction loan, the agency shall enter into an agreement with the mortgagor in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract in a form meeting the requirements of § 250.334.

(2) To execute a certificate of actual costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over 90 percent of actual costs.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 250.334 Form of contract.

(a) *In general.* The contract between the mortgagor and the general contractor shall be in the form of either a lump sum contract or a cost plus contract. The lump sum contract shall provide for the payment of a specified amount. The cost

plus contract shall provide for the payment of the actual cost of construction, not to exceed an upset price, which may include a fee to the builder in an amount allowed by the agency.

(b) *Lump sum contract.* A lump sum contract may be used where it is established to the satisfaction of the agency that no identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor, and where the mortgage is executed by a limited distribution, or general mortgagor. A lump sum contract may also be used where the mortgage is executed by a cooperative mortgagor if the agency makes the foregoing determination as to nonidentity of interest and it is established to the agency's satisfaction that a cost plus form of contract is not required to protest its interests or the interests of the cooperative mortgagor.

(c) *Cost plus contract.* A cost plus contract shall be used in each of the following instances:

(1) Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and the general contractor.

(2) Where the mortgage is executed by a cooperative mortgagor and it is determined by the agency that a cost plus form of contract is required to protect the interests of the agency or mortgagor.

(3) Where the mortgage is executed by a nonprofit mortgagor, unless it is established to the agency's satisfaction that a cost plus form of contract is not required to protect its interests and the interests of the mortgagor, in which case a lump sum form of contract may be used.

§ 250.335 Certificate as to subcontracts.

If it is determined by the agency that the mortgagor, its officers, directors or stockholders, have any interest, financial or otherwise, in any subcontractor or material supplier of the general contractor, the mortgagor must certify to the agency prior to execution of a subcontract or a contract for the supply of materials that the amounts to be paid to such subcontractor or material supplier are not more than the rate prevailing in the locality for similar type labor and materials. If the determination of financial interest is made by the agency after work is performed or materials supplied under such contracts, the certificate of the mortgagor shall be executed prior to final insurance endorsement of the mortgage by the Commissioner.

§ 250.336 Certificate of actual cost—contents in general.

(a) *Submission of certificate.* The mortgagor's certificate of actual cost, in a form approved by the Commissioner, shall be submitted prior to final endorsement and upon completion of the improvements to the satisfaction of the agency.

(b) *Items to be included.* The certificate shall show the actual cost to the mortgagor of:

(1) The cost plus construction contract, including the builder's fee actually paid and approved by the agency; or the lump sum construction contract; or the cost of the construction of the project, where the mortgagor also acts as the general contractor and no construction contract is executed.

(2) The architect's fee.

(3) The offsite public utilities and streets not included in subparagraph (1) of this paragraph.

(4) The organizational and legal expenses.

(5) The other items of expense approved by the Commissioner.

(c) *Items not to be included.* The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, stockholders or partners. Any such payments shall be deducted from the cost determined under paragraph (b) of this section.

§ 250.337 Certificate of actual cost—builder's and sponsor's profit and risk allowance.

(a) *In general.* The mortgagor's certificate of actual cost shall include (except in a case involving a nonprofit or a cooperative mortgagor) an allowance for builder's and sponsor's profit and risk. The amounts of the allowance shall be dependent upon a determination by the agency as to whether or not there exists an identity of interest between the mortgagor or any of its officers, directors, stockholders, or partners and the general contractor.

(b) *Identity of interest cases.* Where an identity of interest exists, a builder's and sponsor's profit and risk allowance shall be included in lieu of the builder's fee provided for in § 250.336(b)(1). This allowance shall be 10 percent of the actual cost, or such lesser amount as the Commissioner shall provide by subsequent amendment to these regulations. Actual cost shall be computed in accordance with § 250.336, excluding the following items:

(1) Any builder's fee actually paid and approved by the agency. (This fee shall be paid out of the builder's and sponsor's profit and risk allowance.)

(2) The cost of the land or any amount paid for a leasehold.

(3) the value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the property involves the financing of repair or rehabilitation.

(c) *Nonidentity of interest cases.* Where no identity of interest exists, a sponsor's profit and risk allowance shall be included. This allowance shall be 10 percent of the actual cost or such lesser amount as the Commissioner shall specify, computed in accordance with § 250.336, excluding the following items:

(1) The amounts paid by the mortgagor under the construction contract.

(2) The cost of the land or any amount paid for a leasehold.

(3) The value of the land and improvements prior to repair or rehabilitation plus the amount of the mortgage proceeds used to refinance any outstanding indebtedness on the property where the mortgage involves the financing of repair or rehabilitation.

§ 250.338 Contractor's certification.

(a) *Certification by general contractor.* Where a cost plus form of contract is used by a cooperative mortgagor or where any other type of mortgagor is required by the agency to use such contract, the mortgagor shall submit along with its certificate of actual cost a certification of the general contractor, in a form approved by the Commissioner, as to all actual costs paid for labor, materials and subcontract work under the general contract exclusive of the builder's fee and any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders or partners.

(b) *Certification by subcontractor.* Where it is determined by the agency that an identity of interest exists between the mortgagor or any of its officers, directors, stockholders or partners and any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor, in a form prescribed by the Commissioner, as to all actual costs paid for labor, materials, subcontractors, and overhead exclusive of any kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor or any of its officers, directors, stockholders or partners. Where the use of a cost plus form of contract is required by the Commissioner or the agency, and it is determined by the agency that an identity of interest exists between the general contractor, any subcontractor, material supplier, or equipment lessor, the mortgagor may be required by the Commissioner or the agency to submit a certification of actual cost by such subcontractor, material supplier, or equipment lessor.

§ 250.339 Records.

The mortgagor shall keep and maintain adequate records of all costs of any construction or other cost items not representing work under the general contract and, in the case of a fixed fee contract, shall require the builder to keep similar records and, upon request by the agency, the Commissioner, or the General Accounting Office shall make available for examination such records including any collateral agreements.

§ 250.340 Certificate of public accountant.

In all projects, the certificate of actual cost shall be supported by a certificate as to accuracy by an independent Certified Public Accountant or independent public accountant, which shall include a statement that the accounts, records and supporting documents have been examined in accordance with gen-

erally accepted audit standards to the extent deemed necessary to verify the actual costs.

§ 250.341 Certification of Actual Cost—Land Value.

Upon receipt of the mortgagor's certification of actual cost, there shall be added to the total amount thereof the agency's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements. In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost: *Provided*, That in no event such amount is in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

§ 250.342 Reduction in mortgage amount—new construction.

If the principal obligation of the mortgage exceeds 90 percent of the total amount as shown by the certificate of actual cost plus the value of the land, the mortgage shall be reduced by the amount of such excess.

§ 250.343 Reduction in mortgage amount—rehabilitation.

In the event the mortgage is to finance repair or rehabilitation, the mortgagor's actual cost of such repair or rehabilitation may include the items of expense permitted for new construction in accordance with § 250.337 and the applicable reduction in mortgage amount will be required. Such mortgage shall also be subject to the following limitations:

(a) *Property held in fee.* If no part of the proceeds is to be used to finance the purchase of the land or structures involved, the mortgage shall be reduced to an amount not to exceed 100 percent of the approved cost of the completed repair or rehabilitation.

(b) *Property subject to existing mortgage.* If the insured mortgage is to include the cost of refinancing an existing mortgage acceptable to the agency, the amount of the existing mortgage or 90 percent of the agency's estimate of the fair market value of the land and existing improvements prior to repair and rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

(c) *Property to be acquired.* If the mortgage is to include the cost of land and improvements, and the purchase price thereof is to be financed with part of the mortgage proceeds, the purchase price, or the agency's estimate of the fair market value of the land and existing improvements prior to repair or rehabilitation, whichever is the lesser, shall be added to the actual cost of the repair or rehabilitation. If the principal obligation of the insured mortgage exceeds 90 percent of the total amount thus obtained, the mortgage shall be reduced by the amount of such excess.

§ 250.344 Requisites of agreement and certification.

Any agreement, undertaking, statement or certification required by § 250.333 shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the Commissioner, and may be relied upon by the Commissioner and the agency as a true statement of the facts contained therein.

§ 250.345 Cost certification incontestable.

Upon the agency's approval of the mortgagor's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

TITLE

§ 250.346 Eligibility of title.

In order for the mortgaged property to be eligible for insurance, the agency must determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence will be examined by the agency and the original endorsement of the credit instrument for insurance will be evidence of its acceptability.

§ 250.347 Title evidence.

(a) Upon insurance of the mortgage, the mortgagor shall furnish to the agency a survey of the mortgaged property, satisfactory to the agency and a policy of title insurance covering such property, as provided in subparagraph (1) of this paragraph. If, for reasons the agency deems satisfactory, title insurance cannot be furnished, the mortgagor shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section, as the agency may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the agency. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the agency. The policy shall name as the insured the agency and the mortgagor as their interests may appear. The policy shall provide that upon acquisition of title by the agency, it will become an owner's policy running to the agency.

(2) An abstract of title satisfactory to the agency, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by the legal opinion satisfactory to the agency as to the quality of such title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

(b) The survey required by paragraph (a) of this section need not be furnished in connection with a project involving rehabilitation where the mortgage does not exceed $200,000.

§ 250.348 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of an agency or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of an agency or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.

Subpart D—Requirements Applicable to Mortgages Insured Under Section 221 (d)(3) or 221 (d)(4)

ELIGIBLE MORTGAGORS

§ 250.401 Eligible mortgagors.

A mortgage shall be executed by a mortgagor meeting the following qualifications:

(a) *Nonprofit.* The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the agency finds is in no manner controlled by, or under the direction of, persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be regulated or supervised under federal or state laws or by political subdivisions of States or agencies thereof, or the agency, as to rents, charges, and methods of operation.

(b) *Limited distribution mortgagor.* The limited distribution mortgagor may be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the agency) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation.

(c) *Cooperative mortgagors.* (1) The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation approved by the agency which restricts permanent occupancy of the project to the members of the corporation and which requires membership eligibility and transfers of membership in a manner approved by the agency.

(2) Such a mortgagor will be regulated or restricted by the agency as to rents or sales, charges, rate of return, and methods of operation.

(d) *General mortgagors.* A general mortgagor shall be any mortgagor, approved by the agency, not meeting the eligibility requirements of paragraphs (a) through (c) of this section which, until the termination of all obligations of the agency and the Commissioner under the insurance contract and during such further period of time as the agency shall be the owner or holder of the mortgage, is regulated or restricted by the agency as to rents or sales, charges, capital structure, rate of return, and methods of operation.

MAXIMUM MORTGAGE AMOUNTS

§ 250.402 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lesser of the following:

(1) *Dollar limitations on unit.* For such part of the property or project attributable to dwelling use (excluding exterior land improvement) an amount per family unit, depending upon the number of bedrooms, which may be:

(i) For projects insured under section 221(d)(3) of the Act:

(*a*) $16,860 without a bedroom
(*b*) $18,648 with one bedroom
(*c*) $22,356 with two bedrooms
(*d*) $28,152 with three bedrooms
(*e*) $31,884 with four or more bedrooms.

(ii) For projects to be insured under section 221(d)(4) of the Act:

(*a*) $18,450 without a bedroom.
(*b*) $20,625 with one bedroom.
(*c*) $24,630 with two bedrooms.
(*d*) $29,640 with three bedrooms.
(*e*) $34,846 with four or more bedrooms.

(2) *New construction.* (i) In the case of new construction where the mortgagor is a nonprofit or a cooperative, 90 percent of the agency's estimate of replacement cost of the property or project when the improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, a project reserve account, not to exceed 5 percent of replacement cost, and other miscellaneous charges incident to construction and approved by the agency).

(ii) In the case of new construction where the mortgagor is a general or a limited distribution mortgagor, 90 percent of the agency's estimate of the replacement cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, a project reserve account, not to exceed 5 percent of replacement cost, and other miscellaneous charges incident to construction and approved by the agency and shall include an allowance of 10 percent of the foregoing items exclusive of land unless the Commissioner, after determining such allowance is unreasonable, prescribes a lesser percentage.

(iii) In the case of new construction, an amount which entails a debt service not in excess of 90 percent of the annual net income, as estimated by the agency.

(3) *Repair or rehabilitation.* (i) In the case of a project which is to be repaired or rehabilitated, 90 percent of the sum of the estimated cost of the repairs or rehabilitation of the project and the agency's estimate of the value of the property before repairs or rehabilitation.

(ii) In the case of a project which is to be repaired or rehabilitated, an amount which entails a debt service not in excess of 90 percent of the annual net income as estimated by the agency.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraphs (a)(1) and (a)(2) of this section not to exceed:

(1) For projects to be insured under section 221(d)(3) of the Act:

$19,680 per family unit without a bedroom.
$22,356 per family unit with one bedroom.
$26,496 per family unit with two bedrooms.
$33,120 per family unit with three bedrooms.
$38,400 per family unit with four or more bedrooms.

(2) For projects to be insured under section 221(d)(4) of the Act:

$20,962 per family unit without a bedroom.
$24,030 per family unit with one bedroom.
$29,220 per family unit with two bedrooms.
$37,800 per family unit with three bedrooms.
$41,494 per family unit with four or more bedrooms.

(c) *Increased mortgage amount—high cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 50 percent, the dollar limitations set forth in this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(d) *Maximum mortgage amount—leaseholds.* The value or replacement cost on which the mortgage amount is based will be limited by the value or replacement cost of the leasehold estate, which shall be the value or replacement cost of the project in fee simple less the value of the leased fee. The value of the leased fee shall equal the market value of the site in fee simple before construction of on-site or off-site improvements. Where the lease provides for increasing ground rents over the term of the mortgage, the initial ground rent may not exceed the market value of the site "as is" in fee simple multiplied by 90 percent of the interest rate of the insured mortgage.

§ 250.403 Adjusted mortgage amount—rehabilitation projects.

A mortgage having a principal amount computed in compliance with this part, and which involves a project to be repaired or rehabilitated, shall be subject to the following additional limitations:

(a) *Property held in fee.* If the mortgagor is the owner of an unencumbered fee simple estate, the maximum mortgage amount shall not exceed 100 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation;

(b) *Property subject to existing mortgage.* If the mortgagor owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the maximum mortgage amount shall not exceed the estimate of the cost of the repairs or rehabilitation plus such portion of the outstanding indebtedness as does not exceed 90 percent of the agency's estimate of the value of such land and improvements prior to the repairs or rehabilitation.

(c) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of the agency's estimate of the cost of the proposed repairs or rehabilitation plus 90 percent of the lesser of either of the following:

(1) The actual purchase price of the land and improvements.

(2) The agency's estimate of the value of such land and improvements prior to the repair or rehabilitation.

MORTGAGES INSURED PURSUANT TO SECTION 223(f)

§ 250.410 Eligibility of mortgages on existing construction.

Notwithstanding the generally applicable requirement that mortgages insured under this subpart be limited to projects to be constructed or substantially rehabilitated after commitment for mortgage insurance, a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project may be insured under sections 221(d)(3) and 221(d)(4) of the National Housing Act pursuant to section 223(f) of the Act and the regulations under this part. Except as modified by §§ 250.411 through 250.416, a mortgage insured under section 221(d)(3) or section 221(d)(4) pursuant to section 223(f) shall meet all requirements of this subpart C.

§ 250.411 Application and commitment.

An application for a commitment to insure upon completion shall be submitted by the Agency to the Commissioner who will issue a commitment if he determines that (a) the project proposed to be insured complies with the requirements of the section of the National Housing Act under which it is proposed to be processed for coinsurance, and (b) the project proposed to be insured was originally underwritten or financed by the agency pursuant to requirements substantially equivalent to those approved by the Commissioner under § 250.202(3), (c) the agency holds

a valid first mortgage lien on the project, (d) taxes are current as of the date of application for commitment for coinsurance, (e) insurance premiums for hazard and other risk are current as of the date of application for coinsurance, and (f) the development is free and clear of mechanics' liens and notices or claims for lien, and an examination of title reveals no liens of record, or that adequate arrangements have been made for satisfying all liens of record.

§ 250.413 Maximum mortgage amounts.

The maximum mortgage amount shall be the lesser of the following:

(a) *Dollar limitations on units.* The total of the amounts per family dwelling unit (excluding exterior land improvements as defined by the Commissioner) depending upon the number of bedrooms which may be:

(1) For projects to be insured under Section 221(d)(3) of the Act:

$16,860 without a bedroom.
$18,648 with one bedroom.
$22,356 with two bedrooms.
$28,152 with three bedrooms.
$31,884 with four or more bedrooms.

(2) For projects to be insured under Section 221(d)(4) of the Act:

$18,450 without a bedroom
$20,625 with one bedroom.
$24,630 with two bedrooms.
$29,640 with three bedrooms.
$34,846 with four or more bedrooms.

(3) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraphs (a)(1) and (a)(2) of this section not to exceed:

(i) For projects to be insured under Section 221(d)(3) of the Act:

$19,680 per family unit without a bedroom.
$22,356 per family unit with one bedroom.
$26,496 per family unit with two bedrooms.
$33,120 per family unit with three bedrooms.
$38,400 per family unit with four or more bedrooms.

(ii) For projects to be insured under Section 221(d)(4) of the Act:

$20,962 per family unit without a bedroom.
$24,030 per family unit with one bedroom.
$29,220 per family unit with two bedrooms.
$37,800 per family unit with three bedrooms.
$41,494 per family unit with four or more bedrooms.

(4) *Increased mortgage amount—high cost areas.* (i) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 50 percent, the dollar limitations set forth in paragraphs (a)(1), (a)(2) and (a)(3) of this section.

(ii) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(b) *Value.* An amount not exceeding 90 percent of the agency's estimate of market value of the project. The final estimate of value shall result from consideration of three indicators of market value:

(1) The estimated market value of the project by capitalization;

(2) The estimated market value by direct sales comparison;

(3) The total estimated replacement cost of the project (without deducting depreciation). Capitalization will use net income which results from market rents estimated by comparison with unsubsidized projects, capitalized at rates extracted from market transactions of comparable properties. Market value by direct sales comparison will be estimated by comparison of the subject property with competing properties recently sold, using at least two units of comparison. The total estimated replacement cost of the project (before depreciation) provides only an upper limit. The final estimate of value must lie between that indicated by capitalization and that indicated by direct sales comparison, but in no event shall the final estimate of value exceed the total estimated replacement cost of the project.

(c) *Property to be refinanced.* If the property is to be refinanced by the insured mortgage, the maximum mortgage amount shall not exceed the cost to refinance the existing indebtedness which will consist of the following items, the eligibility and amounts of which must be determined by the agency and approved by the Commissioner:

(1) The amount of the existing indebtedness,

(2) An amount for the initial deposit for the Reserve Fund for Replacements,

(3) Reasonable and customary legal, organizational, title and recording expenses,

(4) The estimated cost of installing life service components, as defined by the Commissioner, in the project,

(5) Architect's, municipal inspection, and/or engineering fees required for the installation of life service components,

(6) The estimated repair cost, if any.

(d) *Property to be acquired.* If the project is to be acquired by the mortgagor and the purchase price is to be financed with the insured mortgage, the maximum mortgage amount shall not exceed 90 percent of the cost of acquisition as determined by the agency and approved by the Commissioner. The cost of acquisition shall consist of the following items, the eligibility and amounts of which must be determined by the agency and approved by the Commissioner:

(1) Purchase price as indicated in the purchase agreement,

(2) An amount for the initial deposit to the Reserve Fund for Replacements,

(3) Reasonable and customary legal, organizational, title and recording expenses,

(4) The estimated cost of installing life service components, as defined by the Commissioner, in the project,

(5) Architect's, municipal inspection and/or engineering fees required for the installation of life service components,

(6) The estimated cost of repair, if any.

(e) *Debt service.* An amount that can be amortized by the projected net income of the project after payment of operating expenses and taxes.

(f) *Reduced mortgage amount.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value of the property described in the mortgage shall be the value of the leasehold estate (as determined by the agency and approved by the Commissioner) which shall in all cases be less than the value of the property in fee simple.

§ 250.414 Refinancing eligible property in older, declining areas.

In order to be eligible for refinancing if the project is located in an older, declining area, the project shall comply with the following conditions:

(a) The project shall not be eligible for insurance solely under the provisions of Section 223(e) of the National Housing Act;

(b) The refinancing shall be used to lower the monthly debt service only to the extent necessary to assure the continued economic viability of the project as determined by the agency taking into account any rent reduction to be implemented by the mortgagor; and

(c) The mortgagor shall agree that, during the mortgage term, no rental increases shall be made except those which are necessary to offset actual and reasonable operating expense increases or other necessary expense increases approved by the agency.

(d) Three years must have lapsed from the date of completion of the project or beginning of occupancy (whichever is later) to date of application for mortgage insurance.

§ 250.415 Eligible projects.

(a) In order to be eligible for mortgage insurance pursuant to Section 223(f), the project must be fully completed before the application for a commitment to insure is submitted to the Commissioner..

(b) Except for projects eligible under paragraph (c) of this section, three years must have elapsed from the date of completion of the project or beginning of occupancy (whichever is later) to date of application for mortgage insurance.

(c) Projects are eligible on which construction was started prior to December 31, 1975, and on which construction is completed prior to January 1, 1978.

(d) In order to be eligible for mortgage insurance pursuant to Section 223(f), the project shall have attained sustaining occupancy (occupancy that would produce rental income sufficient to pay operating expenses, annual debt

service and reserve fund for replacement requirements), as determined by the Commissioner, prior to endorsement of the mortgage for insurance, or the mortgagor shall provide an operating deficit fund at the time of endorsement for insurance, in an amount, and under an agreement, approved by the Commissioner.

§ 250.416 Eligibility requirements.

The requirements of §§ 250.326, 250.328, and 250.332 through 250.343 of Subpart C, and §§ 250.402 and 250.403 shall not be applicable to mortgages to be insured under Sections 221(d)(3) or 221(d)(4) pursuant to Section 223(f) and the regulations in this part.

§ 250.417 Secondary financing.

(a) When a loan is made to finance the purchase of an existing multifamily housing project, the mortgagor may not have any additional obligations in connection with the transaction which exceed the lesser of:

(1) Seven and one-half percent of the agency's estimate of value, or

(2) Seven and one-half percent of the cost of acquisition as defined in § 250.413(d).

(b) When a loan is made to refinance an existing multifamily housing project, the mortgagor may not have any additional obligations in connection with the transaction which exceed the lesser of:

(1) Seven and one-half percent of the agency's estimate of value, or

(2) Fifty percent of the difference between the cost to refinance as defined in § 250.413(c) and the maximum mortgage amount as determined by the agency.

(c) The additional obligations, if any, provided for in paragraphs (a) and (b) of this section shall be represented by promissory notes. Such notes shall not be due and payable until the maturity date of the mortgage to be insured pursuant to this section, but may be prepaid from surplus cash and in accordance with the conditions prescribed in the Regulatory Agreement between the agency and the mortgagor.

Subpart E—Requirements Applicable to Mortgages Insured Under Section 236

§ 250.501 Definitions used in this subpart.

As used in this subpart, the following terms shall have the meaning indicated:

(a) "Adjusted monthly income" means one-twelfth of the annual family income remaining after making certain exclusions from gross annual income. The following items shall be excluded, in the order listed, from family gross annual income:

(1) 5 percent of such gross annual income, in lieu of amounts to be withheld (social security, retirement, health insurance, etc.).

(2) Any unusual income or temporary income, as defined by the Commissioner.

(3) The earnings of each minor in the family who is living with such family, plus the sum of $300 for each such minor.

(b) "Family" means two or more persons related by blood, marriage, or operation of law, who occupy the same dwelling or unit.

(c) "Gross annual income" means the total income, before taxes and other deductions, received by all members of the tenant's household. There shall be included in this total income all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments and such other income items as the Secretary considers appropriate.

(d) "Handicapped" means a person who has an impairment which:

(1) Is expected to be of long-continued and indefinite duration.

(2) Substantially impedes his/her ability to live independently.

(3) Is of such nature that his ability to live independently could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Service and Facilities Construction Amendment of 1950.

(e) "Minor" means a person under the age of 21. Such term shall not include a tenant or his spouse.

(f) "Elderly" means a person 62 years of age or older.

(g) "Displacee" means a person who has been displaced from an urban renewal area, or as a result of governmental action or as a result of a disaster determined by the President to be a major disaster.

(h) "Assisted admission" means admission at a rent that is less than the fair market monthly rental charge.

§ 250.502 Eligible mortgagors.

A mortgage shall be executed by a mortgagor approved by the agency and meeting the following qualifications:

(a) *Nonprofit mortgagors.* The nonprofit mortgagor shall be a corporation or association organized for purposes other than the making of profit or gain for itself or persons identified therewith and which the mortgagee finds is neither controlled by nor under the direction of persons or firms seeking to derive profit or gain therefrom. Such a mortgagor shall be subject to regulation or supervision as to rents, charges and methods of operation.

(b) *Limited distribution mortgagor.* The limited distribution mortgagor shall be a corporation, trust, partnership, association, other entity, or an individual. Such mortgagor shall be restricted by law (or by the agency) as to distribution of income and shall be regulated as to rents, charges, rate of return, and methods of operation.

(c) *Cooperative mortgagors.* The cooperative mortgagor shall be a nonprofit cooperative ownership housing corporation which restricts permanent occupancy of the project to the members of the corporation who must meet membership eligibility requirements approved by the agency. Such a mortgagor will be regulated or restricted by the agency as to rents or sales, charges, rate of return, and methods of operation.

§ 250.503 Maximum mortgage amounts.

(a) The mortgage shall involve a principal obligation not in excess of the lowest of the following:

(1) *Dollar limitations on units.* For such part of the property or project attributable to dwelling use (excluding exterior land improvement) an amount per family unit, depending on the number of bedrooms, which may be:

(i) $16,860 without a bedroom.

(ii) $18,648 with one bedroom.

(iii) $22,356 with two bedrooms.

(iv) $28,152 with three bedrooms.

(v) $31,884 with four or more bedrooms.

(2) *New construction.* In the case of new construction 90 percent of the agency's estimate of replacement cost of the property or project when the improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, a project reserve account not to exceed 5 percent of replacement cost, and other miscellaneous charges incident to construction and approved by the agency.

(3) *Repair or rehabilitation.* In the case of a project which is to be repaired or rehabilitated, 90 percent of the sum of the estimated cost of the repairs or rehabilitation of the project and the agency's estimate of the value of the property before repairs or rehabilitation.

(b) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (a)(1) of this section not to exceed:

(1) $19,680 per family unit without a bedroom.

(2) $22,356 per family unit with one bedroom.

(3) $26,496 per family unit with two bedrooms.

(4) $33,120 per family unit with three bedrooms.

(5) $38,400 per family unit with four or more bedrooms.

(c) *Increased mortgage amount—high-cost areas.* (1) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 50 percent, the dollar limitations set forth in paragraph (a)(1) and (b) of this section.

(2) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area

increases, if any, otherwise applicable by more than one-half thereof.

(d) *Maximum Mortgage Amount—Leaseholds—Section 236.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent. The capitalization factor used in determining the capitalized value of the ground rent shall not exceed the interest rate of the mortgage. The annual Ground Rent may not exceed the market price of site in fee simple multiplied by the market interest rate of the insured mortgage.

§ 250.504 Commercial and community facilities.

(a) The project may include only such commercial and community facilities as the agency determines will be adequate and appropriate to serve the occupants, and such additional facilities permitted under the provision of the National Housing Act pursuant to which coinsurance is being provided, as may be agreed to by the Commissioner and the agency. Except for housing for the elderly, in no event shall net rentable commercial area exceed 10 percent of the total net rentable area, both commercial and residential. Notwithstanding the above, this limitation may be waived, for good cause, by the Commissioner.

(b) In the case of a project designed primarily for occupancy by the elderly or handicapped, the project may include such related facilities as cafeterias or dining halls, community rooms, workshops, infirmaries, or other inpatient or outpatient health facilities and other essential service facilities for use by elderly or handicapped families.

§ 250.505 Rental charges.

(a) *Approved rental charges.* The mortgagor shall, with the approval of the agency establish for each dwelling unit the following:

(1) A basic monthly rental charge determined on the basis of operating the project with payments of principal and interest due under a mortgage bearing interest at the rate of 1 percent per annum.

(2) A fair market monthly rental charge determined on the basis of operating the project with payments of principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage.

(b) *Monthly rental charge.* The monthly rental for each dwelling unit shall be 25 percent of the tenant's adjusted monthly income, except that the monthly rental shall not be less than the basic rental nor more than the fair market rental charge. In the event of any change in a tenant's income, the monthly rental charge shall be adjusted by the mortgagor.

(c) *Application of terms.* In the case of a cooperative project, the term "tenant" as used in this subpart shall mean a member of a cooperative and the term "rental charge" shall mean the charges under the occupancy agreement of members of the cooperative.

§ 250.506 Determination of project feasibility—fair market rentals.

In the determination of project feasibility prior to issuing a commitment for mortgage insurance under this part, the fair market rentals estimated in accordance with § 250.505(a)(2) shall be at a level that can be expected to attract nonsubsidized tenants who will pay fair market rentals and shall not exceed the rentals obtainable for reasonably comparable nonsubsidized rental dwelling units similarly located. Reasonable adjustments may be made in such rentals to reflect additional management services such as increased tenant screening, counseling, and income certification and recertifications, and amenity levels not available in otherwise reasonably comparable nonsubsidized rental dwelling units similarly located.

§ 250.507 Excess rental charges.

The mortgagor shall agree to pay monthly to the agency for transmittal to the Department of Housing and Urban Development the difference between the total rents collected on the dwelling units (with an adjustment for delinquent rents collected for prior months) and the basic rents for all occupied units.

§ 250.508 Occupancy requirements.

(a) *Initial occupancy.* Initial occupancy of the project by tenants who are unable to pay the fair market rental shall be restricted to those determined by the mortgagor as meeting the income requirements established by the Commissioner.

(b) *Projects designed for displacees, or elderly, or handicapped.* In a project designed for displacees, or elderly or handicapped, occupancy may be restricted to that category of persons for whom the project was designed and who meet the income requirements established by the Commissioner.

(c) *Recertification of income.* The mortgagor shall obtain from each tenant or cooperative member who is not paying the fair market rental a biennial recertification of family income.

§ 250.509 Guidelines for assisted admission.

(a) *Maximum income.* The adjusted income of an applicant shall not exceed the maximum income limits authorized by the Secretary.

(b) *Ability to pay rent.* The project owner or his managing agent may, at his discretion, admit an applicant for assisted admission whose adjusted income meets the requirement in paragraph (a) of this section if, in his judgment, the applicant has an adequate income to pay the basic monthly rental charge. The project owner or his managing agent shall maintain supporting written documentation for the decision that an applicant has or does not have an adequate income to pay the basic monthly rental charge based upon these factors:

(1) A local welfare or other agency has agreed to pay all or a portion of the basic monthly rental charge.

(2) The applicant is 62 years of age or older.

(3) The applicant is a qualified tenant on whose behalf the project owner will receive supplemental payments under Part 215, or rental assistance payments under Subpart D of Part 236, of this chapter.

(4) The applicant has established a history of rent-paying ability at levels equal to or greater than basic rent.

(5) The applicant has sufficient income, when considered together with other assets, to pay the basic monthly rental charge for a reasonable period.

(6) The applicant receives food stamps, surplus commodities or similar benefits that favorably affect the applicant's ability to pay rent.

(7) Such other factors as, in the judgment of the project owner or his managing agent, bear favorably upon the applicant's ability to pay rent.

§ 250.510 Form of lease and occupancy agreement.

A tenant who is to pay less than the fair market rental shall be required to execute a lease in a form approved by the Commissioner, which lease shall contain provisions for the monthly rent to be paid by the tenant, services to be furnished by the landlord, the term of the lease, recertification of tenant income, increase in rents upon increase in income, prohibition against the tenant subleasing the premises, and other covenants between landlord and tenant customarily contained in leases for rental units. A cooperative member shall be required to execute an occupancy agreement in a form approved by the agency, regardless of the rent he is paying. The occupancy agreement shall contain the same covenants as a lease for a rental unit, except that where the cooperative member is not entitled to assistance under this subpart, there shall be no requirement for recertification of income or increase in rent due to increase in income.

MORTGAGES INSURED PURSUANT TO SECTION 223(f)

§ 250.515 Incorporation by reference.

All of the provisions of §§ 250.410 through 250.416 of Subpart D of this part are incorporated by reference into this subpart, except § 250.413 (a), (e) and (f).

§ 250.516 Maximum Mortgage Amount.

(a) *Dollar limitations on units.* (1) For such part of the property or project attributable to dwelling use (excluding exterior land improvement as defined by the Commissioner) an amount per family unit, depending upon the number of bedrooms, which may be:

$16,860 without a bedroom
$18,648 with one bedroom
$22,356 with two bedrooms
$28,152 with three bedrooms
$31,884 with four or more bedrooms

(2) *Increased mortgage amount—elevator type structures.* In order to compensate for higher costs incident to construction of elevator type structures of sound standards of construction and design, the Commissioner may increase the dollar amount limitations per family unit as provided in paragraph (b)(1) of this section not to exceed:

$19,680 per family unit without a bedroom
$22,356 per family unit with one bedroom
$26,496 per family unit with two bedrooms
$33,120 per family unit with three bedrooms
$38,400 per family unit with four or more bedrooms.

(3) *Increased mortgage amount—high cost areas.* (i) In any geographical area where the Commissioner finds cost levels so require, the Commissioner may increase, by not to exceed 50 percent, the dollar amount limitations set forth in paragraphs (b)(1) and (b)(2) of this section.

(ii) If the Commissioner finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum mortgage amounts provided in this section, the principal obligation of mortgages may be increased in such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(b) *Debt service.* An amount that can be amortized, assuming that the mortgage bears an interest rate of one percent, by the projected net income of the project (excluding interest reduction payments made by the Secretary to the agency) after payment of operating expenses, taxes, and excess rental charges due to the Secretary.

(c) *Maximum Mortgage Amount—Leaseholds—Section 236.* In the event the mortgage is on a leasehold estate rather than on a fee simple holding, the value or replacement cost of the property on which the mortgage is based is the value or replacement cost of the property in fee simple reduced by an amount equal to the capitalized value of the ground rent. The capitalization factor used in determining the capitalized value of the ground rent shall not exceed the interest rate of the mortgage. The annual Ground Rent may not exceed the market price of site in fee simple multiplied by the market interest rate of the insured mortgage.

Subpart F—Contract Rights and Obligations

§ 250.701 Definitions.

As used in this subpart the following terms shall have the meaning indicated:

(a) "Commissioner" means the Federal Housing Commissioner.

(b) "Act" means the National Housing Act, as amended.

(c) "Mortgage" means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall include both the original mortgage and the instrument securing the operating loss loan.

(d) "Insured mortgage" means a mortgage which has been insured by the issuance of a Mortgage Insurance Certificate by the Commissioner, or his duly authorized representative.

(e) "Contract of coinsurance" means the agreement between the agency and the Commissioner for the coinsurance of a mortgage evidenced by the issuance of a Mortgage Insurance Certificate by the Commissioner and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) "Mortgagor" means the original borrower under a mortgage and its successors and such of its origins as are approved by the Commissioner.

(g) "MIP" means the mortgage insurance premium paid by the agency to the Commissioner in consideration of the contract of coinsurance.

§ 250.703 Creation of contract of coinsurance.

(a) No contract of coinsurance shall come into existence until the agency has submitted to the Commissioner for insurance a minimum of ten mortgages which meet the requirements of this part. The contract of coinsurance with an agency shall be effective from the date of the endorsement for insurance of ten mortgages constituting the agency's initial portfolio. Notwithstanding the above, in lieu of a minimum of ten mortgages in a portfolio, a contract of coinsurance may be created if the agency has submitted to the Commissioner less than ten mortgages, provided that, if less than ten mortgages are submitted, the schedule of front-end deductible amounts in § 250.733 will apply.

(b) Once the agency's initial portfolio has been endorsed, the agency may add additional coinsured mortgages to that portfolio or may, at its option, establish second and succeeding portfolios. Once included with a portfolio, a coinsured mortgage may not be transferred from that portfolio without the approval of the Commissioner. The agency has the option of submitting to the Commissioner for insurance portfolios consisting of one or more mortgages.

(c) This subpart shall constitute the contract of coinsurance and the agency and the Commissioner shall be bound by the regulations in this subpart with the same force and effect and to the same extent as if a separate contract had been executed.

§ 250.704 Interest reduction payments contract.

(a) This section shall constitute the interest reduction payment contract between the agency and the Commissioner with respect to a mortgage insured under Section 236 pursuant to Section 244 of the National Housing Act or Section 236 pursuant to Section 223(f) pursuant to Section 244 of the National Housing Act. The endorsement of the mortgage for insurance shall constitute the execution of the interest reduction payment contract with respect to the mortgage being insured.

(b) Term of payments: (1) The term for which interest reduction payments shall be made shall begin on the date on which the Commissioner issues the Mortgage Insurance Certificate.

(2) The term of the interest reduction payments shall end upon the occurrence of one of the following events:

(i) The termination of the contract of insurance.

(ii) The Commissioner's receipt of the agency's notice of commencement of foreclosure proceedings.

(iii) The Commissioner's receipt of the agency's notice of intention to acquire title by means other than foreclosure.

(iv) At the discretion of the agency, the mortgagor's failure to meet its obligations under the regulatory agreement it has entered into with the agency.

(3) Upon termination of the interest reduction payments contract, the payment due on the first of the month in which the termination occurs shall be the last payment to which the agency shall be entitled.

(4) Where the term of interest reduction payments is ended pursuant to paragraph (b)(2) of this section, such interest reduction payment contract may be reinstated by the Commissioner, in his discretion and on such conditions as he may prescribe. In the event of such reinstatement, interest reduction payments will be made to the agency for those months during which such payments were suspended.

(c) *Time of payments.* The interest reduction payments shall be due on the first day of each month following the beginning of the term, and shall be paid upon the receipt of a billing (on a form prescribed by the Commissioner) from the agency.

(d) *Amounts of payments.* The amount of the interest reduction payment to the agency shall be the difference between the following:

(1) The monthly installment for principal, interest, and mortgage insurance premium which the mortgagor is obligated to pay under the mortgage; and

(2) The monthly payment for principal and interest the mortgagor would be obligated to pay if the mortgage were to bear interest at the rate of 1 percent per annum.

(e) In addition to the interest reduction payment referred to in paragraph (f) of this section, the agency shall be entitled to the monthly payment of an amount the Commissioner deems sufficient to reimburse the agency for its expenses in servicing the mortgage.

(f) *Application of payments.* The agency shall apply each monthly interest reduction payment, together with the mortgagor's monthly payment, to the

items and in the order set out in the mortgage.

(g) *Agency records.* The agency shall maintain such records as the Commissioner may require with respect to the mortgagor's payments and the interest reduction payments received from the Commissioner. Such records shall be kept on file for a period of time and in a manner prescribed by the Commissioner and shall be made available, when requested, for review and inspection by the Commissioner or the Comptroller General of the United States.

MORTGAGE INSURANCE PREMIUMS

§ 250.705 Amount of MIP to be collected from the mortgagor.

The agency may collect from the mortgagor a MIP from the date of the contract of coinsurance which shall not exceed, with respect to mortgages to finance new construction or rehabilitation, the equivalent of 0.4 percent per annum of the amount of the principal obligation of the mortgage outstanding at any time without taking into account delinquent payments or prepayments; and with respect to mortgages insured pursuant to Section 223(f), the agency may collect from the mortgagor an MIP from the date of the contract of coinsurance which shall not exceed an initial MIP of one percent of the principal obligation for the first year of the mortgage and 0.5 percent per annum of the amount of the principal obligation of the mortgage outstanding at any time thereafter, without taking into account delinquent payments or prepayments. This section shall not in any way restrict the amount by which the mortgage interest rate exceeds the cost of agency borrowing.

§ 250.706 Method of payment of MIP.

The payment of any MIP under this subpart shall be made to the Commissioner by the agency in cash. The MIP will be paid annually on a level percentage of the declining principal balance.

§ 250.707 Annual payment of MIP on a level percentage of the declining principal balance.

(a) Except for mortgages insured pursuant to Section 223(f), the agency shall pay to the Commissioner on the effective date of the contract of coinsurance, a first year mortgage insurance premium, covering a period of one year, equal to 0.4 percent of the outstanding principal balance of the mortgage. Each year thereafter, the agency, on the anniversary date of the contract of coinsurance shall pay a premium for the following year, equal to 0.4 percent per annum of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

(b) For mortgages insured pursuant to Section 223(f), the agency shall pay to the Commissioner on the effective date of the contract of coinsurance, a first year mortgage insurance premium, covering a period of one year, equal to 1 percent of the outstanding principal balance of the mortgage. Each year thereafter, the agency, on the anniversary date of the contract of coinsurance shall pay a premium for the following year, equal to 0.5 percent per annum of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

(c) For operating loss loans made pursuant to § 250.320, the agency shall pay to the Commissioner, upon the endorsement of the increase loan credit instrument covering the operating loss loan, a first year mortgage insurance premium, covering a period of one year, equal to 1 percent of the outstanding principal balance of the mortgage. Each year thereafter, the agency shall pay a premium for the following year, equal to 0.5 percent per annum of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments or prepayments.

§ 250.710 Duration of MIP.

The MIP required under § 250.707 shall continue annually until the earliest date on which one of the following occurs:

(a) The mortgage is paid in full,

(b) A deed to the agency is filed for record, or

(c) The contract of coinsurance is otherwise terminated with the consent of the Commissioner.

§ 250.712 Pro rata payment of annual MIP.

(a) If the contract of coinsurance is terminated after the due date of the initial MIP due in accordance with § 250.707, the agency shall pay to the Commissioner that portion of the current annual MIP prorated from the due date of the last annual MIP through the end of the month in which the contract of coinsurance is terminated.

(b) For the purpose of computing the pro rata portion of the annual MIP, the date of termination of coinsurance shall be the last day of the month in which the mortgage was prepaid or a voluntary termination request is received by the Commissioner.

DEFAULT UNDER THE MORTGAGE

§ 250.715 Definition of default.

The following shall be considered a default under this subpart:

(a) Failure of the mortgagor to make any payment due under the mortgage;

(b) Failure of the mortgagor to perform any other covenant under the provisions of the mortgage, if the agency, because of such failure has accelerated the debt; or

(c) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and the original mortgage.

§ 250.716 Date of default.

For the purposes of this subpart, the date of default shall be considered as 30 days after:

(a) The first uncorrected failure to perform any obligation under the mortgage; or

(b) The first failure to make a monthly payment which is not covered by subsequent payments made by the mortgagor when such subsequent payments are applied to the overdue monthly payments in the order in which they became due.

§ 250.717 Notice of default.

The agency shall, within 60 days after the date of default as defined in this part, give written notice thereof to the Commissioner on a form prescribed by him, unless such default has been cured or unless the Commissioner has been notified of a previous default which remains uncured.

§ 250.718 Reinstatement of defaulted mortgage.

If after default and prior to the completion of foreclosure proceedings the mortgagor shall cure the default, the insurance shall continue as if a default had not occurred. The mortgagor shall pay to the agency such expenses as the agency has incurred in connection with the foreclosure proceedings and the agency shall give written notice of reinstatement to the Commissioner.

§ 250.719 Forbearance relief.

Notwithstanding the provisions of § 250.720 of this subpart, a mortgagor and an agency may enter into an agreement, not inconsistent with any provision of this part other than § 250.720, for the reduction or suspension of regular mortgage payments: *Provided*, That during such period of forbearance, all monies received from rents or other sources must be applied toward the payment of operating costs, and not dividends.

§ 250.720 Special forbearance agreement.

(a) In a case where the mortgage is in default, but the mortgagor has made at least 50 percent of its scheduled monthly mortgage payments on a cumulative basis for a period of not less than one year, the mortgagor and the agency may enter into a special forbearance agreement for the reduction of regular mortgage payments for a specified period of time, if the agency determines that the default is due to circumstances beyond the mortgagor's control and the mortgage probably will be restored to good standing within a reasonable period of time.

(b) If the mortgagor fails to meet the requirements of a special forbearance agreement entered into under this section or to resume the regular monthly payment required under the mortgage at the expiration of the forbearance period, and such failure continues for a period of 30 days, the agency shall notify the Commissioner of such failure.

(c) A special forbearance agreement entered into under this section shall require the mortgagor to use all monies received from rents or other sources toward payment of operating costs, and not dividends, during the period in which the advances described in § 250.723 are being made.

ADVANCES BY COMMISSIONER TO AGENCY

§ 250.723 Advance to agency.

(a) The Commissioner will make an advance to an agency which has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(b) Terms of advance: (1) The amount of an advance authorized by paragraph (a) of this section, shall not exceed one-half of the short-fall in debt service for a 36 month period (which need not occur consecutively), but in no case shall it exceed 10 percent of the total monthly payments provided for under the mortgage with respect to which the agency has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(2) The Commissioner will make quarterly payments of the amount of an advance to an agency authorized by this section and each quarterly payment shall not exceed that amount required to cover, for a three month period, 10 percent of the total monthly payments provided for under the mortgage with respect to which the agency has entered into a special forbearance agreement with a mortgagor pursuant to the provisions of § 250.720.

(3) The agency shall execute a note payable to the Commissioner for the amount of each quarterly payment authorized by such paragraph (b)(2) of this section which note shall provide for interest at the debenture rate established pursuant to § 250.742.

(4) The note shall also provide that:

(i) If the agency makes a claim for insurance benefits on account of a loss sustained with respect to a mortgage which has been the subject of a special forebearance agreement pursuant to the provisions of § 250.720, the Commissioner will debit that claim by the amount of any advances made on account of that mortgage (pursuant to this section) which have not been repaid plus the accrued interest.

(ii) If the default in a mortgage is cured, the agency will repay the advance plus interest to the Commissioner over a period of time not to exceed the remaining term of the mortgage.

(iii) Any payments made by a mortgagor under a special forbearance agreement to bring a mortgage which has been the subject of an advance pursuant to this subsection into good standing shall be divided equally between the agency and the Commissioner until that portion of the advance made by the Commissioner is repaid in full.

(iv) If the contract of coinsurance for the mortgage on which the advance was made shall be terminated in accordance with §§ 250.726 through 250.728, the note evidencing such advance shall remain in full force and effect and payable in accordance with its terms.

TERMINATION

§ 250.726 Termination of coinsurance contract.

The contract of coinsurance for each individual mortgage shall be terminated if:

(a) The mortgage is paid in full prior to its maturity;

(b) The agency acquires the mortgaged property and notifies the Commissioner that no claim for insurance benefits will be made;

(c) After foreclosure the property is redeemed;

(d) The property is bid in and acquired at foreclosure sale by a party other than the agency; or

(e) The mortgagor and agency jointly request termination.

§ 250.727 Notice and date of termination by Commissioner.

The Commissioner shall notify the agency that the contract of coinsurance on a mortgage has been terminated and the effective termination date. The termination date shall be the last day of the month in which any one of the following events occur:

(a) The date foreclosure proceedings were instituted, or the property otherwise acquired by the agency, if the agency notifies the Commissioner that no claim for insurance benefits will be made;

(b) The date the mortgage was prepaid in full;

(c) The date a voluntary termination request is received by the Commissioner.

§ 250.728 Effect of termination.

Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and agency shall be terminated.

CLAIM PROCEDURE

§ 250.730 Acquisition of property.

At any time after the default of the mortgage and the determination by the agency to accelerate the total principal amount of the mortgage, the agency, at its election, shall (if no other eligible entity has assumed the obligations of the mortgagor) either (a) commence foreclosure of the mortgage; or (b) acquire possession of and title to, the mortgaged property by means other than foreclosure. The agency shall notify the Commissioner of its action at the time it makes its election either to commence foreclosure of the mortgage or acquire possession and title by other means.

§ 250.731 Deed in lieu of foreclosure.

In lieu of instituting or completing a foreclosure, the agency may acquire property by voluntary conveyance from the mortgagor. Conveyance of the property by deed in lieu of foreclosure is approved subject to the following requirements:

(a) The mortgage is in default at the time the deed is executed and delivered;

(b) The credit instrument is cancelled and surrendered to the mortgagor;

(c) The mortgage is satisfied of record as a part of the consideration for such conveyance; and

(d) The deed from the mortgagor contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title.

§ 250.732 Notice to Commissioner.

At the time the agency elects to acquire title, it shall give written notice to the Commissioner of its intention to file a claim for insurance benefits.

§ 250.733 Application for insurance benefits.

(a) *Deductible.* Before an agency can file a claim for insurance benefits on any property acquired through a defaulted mortgage in an eligible portfolio of ten mortgages, the agency must establish that the losses incurred on mortgages within the portfolio are equal to at least three percent of the outstanding principal balance of all mortgages within the portfolio at the time the claim is filed. Where an eligible portfolio contains less than ten mortgages, the following schedule of deductible percentages will apply:

Number of mortgages in portfolio:	*Deductible percentage*
1	10
2	8
3–5	5
6–9	4

In order to satisfy the deductible, the agency must acquire properties securing mortgages in the portfolio until the applicable percentage loss is established. The loss is determined by deducting the market value of the properties acquired for use for the market originally intended, as determined by an independent appraiser, from the unpaid balance due on the mortgages secured by such properties plus the expenses of such acquisition as approved by the Commissioner. The losses so determined must equal or exceed the applicable percentage of the outstanding balance of all mortgages in the portfolio at the time the claim is filed.

(b) After the agency has acquired the property as provided in § 250.730 and satisfied the deductible in accordance with paragraph (a) of this section, the agency may make a claim for insurance benefits. At the time that the claim is made, the Commissioner shall estimate the total amount of the insurance benefits which will be due the agency upon disposition of the property, and a partial payment will be made to the agency on its claim in accordance with § 250.738(a).

PAYMENT OF INSURANCE BENEFITS

§ 250.734 Method of payment.

Payment of the insurance claim shall be made in cash unless the agency files a written request for payment in debentures.

§ 250.738 Amount of payment.

(a) Upon the acquisition of title to the property securing a defaulted mortgage in accordance with § 250.730, the agency shall be entitled to receive 60 percent of the difference between the unpaid prin-

cipal balance on the date of the institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default and the appraised value of the property secured in accordance with § 250.739(a).

(b) Upon disposition of the property or the expiration of 12 months from the date of acquisition of the property, whichever occurs earlier, the agency shall be entitled to the balance of the insurance benefits.

(c) The basis for the computation of insurance benefits shall be the sum of the unpaid principal balance on the date of the institution of foreclosure proceedings or on the date of acquisition of the property otherwise after default, plus the amount of all payments made by the agency and allowances for items as set forth in § 250.740 less all items as set forth in § 250.741.

(d) The amount of the total insurance benefits shall be 80 percent of the amount computed pursuant to paragraph (c) of this section.

§ 250.739 Disposition of property.

(a) Upon the acquisition of title to the property securing a defaulted mortgage in accordance with § 250.730, the agency shall obtain an appraisal of the property by an independent appraiser. The appraisal shall be based upon the market value of the property for use for the market originally intended.

(b) After the agency sells the property, or after the expiration of 12 months, whichever occurs first, the agency may make a claim for the balance of the insurance benefits to which it is entitled in accordance with § 250.738(b).

(c) Upon making a claim to the Commissioner for the balance of the insurance benefits, the agency shall notify the Commissioner, on an approved form, of the sale of the property, the purchase price, and income and expenses incurred in connection with the acquisition, repair, operation and sale of the property, and shall assign to the Commissioner, without recourse or warranty, any and all claims (other than the mortgage financing such sale) which the agency has acquired in connection with the transaction.

(d) If the property has not been disposed of at the time of the agency's request for final payment, the agency shall utilize the appraised value of the property secured in accordance with paragraph (a) of this section in its notification to the Commissioner, in lieu of the sales price.

§ 250.740 Items included in claim payment.

The insurance benefits paid shall include the following items:

(a) The amount of all payments made by the agency for taxes, special assessments and water rates which are liens prior to the mortgage; for fire and hazard insurance on the property; and for any mortgage insurance premiums paid after default;

(b) An amount equivalent to debenture interest at the rate established pursuant to § 250.742 on the principal of the mortgage unpaid on the date of the institution of foreclosure proceedings or on the date of the acquisition of the property otherwise after default, from the date of default to the date of acquisition of title; except that debenture interest shall not be payable for any period for which the agency receives mortgage interest during a forbearance agreement as provided in paragraph (c) of this section;

(c) The amount of the unpaid mortgage interest computed from the date of default to the date of acquisition of title in those cases where a forebearance agreement in accordance with § 250.719 has been executed;

(d) An amount equivalent to mortgage interest on the principal of the mortgage unpaid on the date of institution of foreclosure proceedings or on the date of acquisition of the property after default, from the date of acquisition to the date of payment of the insurance benefits.

(e) Foreclosure costs or costs of acquiring the property otherwise actually paid by the agency and approved by the Commissioner, in an amount not in excess of two-thirds of such costs;

(f) Reasonable payments made by the agency for:

(1) Preservation, operation, and maintenance of the property;

(2) Repairs necessary to meet the objectives of the HUD Minimum Property Standards, those required by local law, and such additional repairs as may be specifically approved in advance by the Commissioner;

(3) Expenses in connection with the sale of the property.

§ 250.741 Items deducted from claim payment.

There shall be deducted from the total of the added items in §§ 250.738(c) and 250.740 the following items:

(a) All amounts received by the agency on account of the mortgage after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All cash held by the agency or its agents or to which it is entitled, including deposits made for the account of the mortgagor.

(c) All funds held by the agency for the account of the mortgagor received pursuant to any other agreement.

(d) The amount of any undrawn balance under a letter of credit accepted by the agency in lieu of a cash deposit for an escrow agreement.

(e) Any net income received by the agency from the property securing the mortgage after the date of default.

(f) The net proceeds from the sale of the project, except that if the agency sells the project for an amount less than the appraised value on a negotiated sale the amount to be deducted will be the appraised value. If the property is sold on the basis of a competitive bidding procedure approved by the Commissioner, the sales prices will be deducted notwithstanding that it is lower than the appraised value. If the property has not been disposed of within 12 months from the date of acquisition, the agency shall use the appraised value of the property as the surrogate sales price.

(g) Balance due on the note from the agency to the Commissioner for advances made to the agency on a defaulted mortgage in accordance with § 250.723.

§ 250.742 Debentures.

All of the provisions of § 207.259(e) of this chapter shall apply to mortgages coinsured under this subpart.

AMENDMENTS

§ 250.743 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of an agency under the contract of coinsurance on any mortgage already coinsured and shall not adversely affect the interest of an agency on any mortgage to be coinsured on which the Commissioner has made a commitment to insure.

Effective date. This regulation shall be effective on September 29, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing,
Federal Housing Commissioner.

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WEDNESDAY, SEPTEMBER 29, 1976

PART IV:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Low Income Housing

PHA-OWNED PROJECTS—PERSONNEL POLICIES AND COMPENSATION

Certification of Housing Managers

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-338]

PART 867—PHA-OWNED PROJECTS—PERSONNEL POLICIES AND COMPENSATION

Certification of Housing Managers

The Department of Housing and Urban Development (HUD) gave notice on June 10, 1975, at 40 FR 24738 that it proposed to amend Title 24 of the Code of Federal Regulations by adding to Chapter VIII a new Part 867, PHA-Owned Projects—Personnel Policies and Compensation, and within it a new Subpart C, Certification of Housing Managers. Subpart C will require that Housing Managers and Assistant Housing Managers for PHA-Owned Projects assisted under the United States Housing Act of 1927 be certified by organizations or entities approved by HUD.

Subpart C is intended to establish a basic level of minimum qualifications for key management officials of PHA-owned housing units. It is not designed to remove the basic responsibility from PHAs for the employment of high-quality management officials, and for the achievement of sustained high-quality performance by such personnel. By providing a basic minimum level of qualifications, the Regulation is intended to help PHAs in carrying out this responsibility.

In response to the June 10, 1975, notice of proposed rulemaking, HUD received thirty-one comments. All comments received were carefully considered and many changes have been made to the proposed Regulation in response to the comments received. A discussion of the principal comments and changes is set forth below:

1. *General.* One comment questioned the establishment of a certification requirement and suggested that such a requirement, if adopted by the Department, might result in higher salary and administrative costs because certification tends to restrict the supply of eligible job seekers. The Department believes, however, that there is a need for establishing appropriate minimum professional standards for public housing projects and that the advantages to be derived from such standards in terms of both quality of service and improved efficiency will outweigh any impact of the certification system upon salaries and administrative costs.

2. *Section 867.302. Definitions—Approved Certifying Organization.* A number of comments suggested that one specific organization be designated to perform the certifying function; others suggested that there be more than one such designee. HUD believes that every suitable organization or entity which applies should be given consideration. Thus, the additional definition of "Approved Certifying Organization" has been included to indicate that there may be more than one such approved organization. This definition also serves to clarify the anticipated functions of such organization(s) or entity(ies).

3. *Section 867.302. Definitions—Housing Manager/Assistant Housing Manager.* Several comments requested clarification of these definitions to reflect the responsibilities of each position by outlining the key tasks (e.g., the responsibility for tenant and community relations) to be performed. It was not deemed practicable to do this. However, in order to achieve the same objective, a provision has been added to § 867.304 under which PHAs will be required to submit the positions and names of the persons for whom, in their judgment, certification is required, as well as any others for whom certification is desired. Language has also been added to make it clear that the test under the definition is the type of responsibility, irrespective of the title of the person bearing the responsibility. (See also discussion under item 14 below.)

4. *Section 867.302 Definitions—Housing Manager.* One comment suggested that the words "including the supervision of employees" in the definition of Housing Manager be changed to "which may include the supervision of employees" in order to clarify that the definitions of Housing Manager and Assistant Housing Manager do not exclude those managers or assistant managers who do not supervise other employees. This suggestion has been adopted.

5. *Section 867.302. Definitions—Certification.* A suggestion that the list of goals in the definition of the term certification be expanded to include "equal opportunity" has been adopted to evidence HUD's commitment to non-discrimination policies and goals.

6. *Section 867.303. Standards to be Adopted by Approved Certifying Organizations.* This section outlines the procedures and standards for HUD approval of certifying organization(s) or entities. One comment suggested that the criteria and standards adopted by the certifying organization(s) must be reasonably related to job requirements. Several comments suggested that various factors must be considered in the development of the certification program, including aptitude and civil service status, as well as the special requirements of small housing authorities, and management of elderly/non-elderly housing, homeownership-opportunity housing, Indian and Native American housing, and housing in rural/densely-populated areas and remotely-located areas. These suggestions have been adopted and incorporated in § 867.303(d).

7. *Section 867.303. Evaluation of Applicant Certifying Organizations.* Paragraph (a) of § 867.303 has been amended to provide that HUD will evaluate applicant organizations upon their past performance in the field of housing management and compliance with HUD's non-discrimination policies and the suitability of the programs submitted. This amendment further emphasizes HUD's commitment to such policies.

8. *Section 867.303. Certification Review Committee.* One comment suggested that HUD establish a Certification Review Committee to review and make recommendations on applications submitted and program improvements. The Department has established such a committee which will develop and review specific criteria based on the policies in this Regulation.

9. *Section 867.303. PHAs as Approved Certifying Organizations.* Numerous comments were directed to the type of organization or entity which would be approved as a certifying organization. Several PHAs with current management-training programs expressed a desire to certify their own Managers and Assistant Managers. One comment suggested that the local Civil Service Commission be the certifying entity. These suggestions have not been adopted as they were deemed inconsistent with the goal of a unified national system of standards and training for Housing Managers and Assistant Housing Managers. However, a provision has been added stating that an Approved Certifying Organization, in adopting the standards/criteria certification, may consider other housing management training programs and may adopt, where appropriate, standards that reflect or give effect to such programs.

10. *Section 867.303. Notice to State Agencies of Approved Certifying Organizations.* A suggestion that state agencies be given notice of the approval and reapproval of organizations and entities has been adopted. The names of currently approved certifying organizations and their standards and criteria will be published in the FEDERAL REGISTER pursuant to § 867.303(c).

11. *Section 867.304. Required Certification of Assistant Housing Managers.* One comment suggested that the requirement of Certification for Assistant Housing Managers may prove only marginally useful because of the limited responsibility exercised by these employees in most PHAs. The position of "Assistant Housing Manager" has been included in the certification requirement because this Regulation is intended to establish a basic level of qualifications for all key management officials of PHAs. As the person responsible for aiding the Housing Manager in performing his/her managerial responsibilities, the Assistant Housing Manager is considered such a key management official. In addition, the inclusion in this section of a new paragraph (d), which is discussed below, will aid PHAs in the identification and exclusion of those persons who perform no direct day-to-day managerial-assistance or management functions.

12. *Section 867.304. Requirement for Certification—Size of Project.* Several comments suggested that the extent of managerial responsibility is more appropriately determined by the number of housing units for which the manager is responsible than by the size of the project or projects. In response to these comments, the word "project" has been deleted from this section and the require-

ment of Certification has been based upon the number of units under control of the Housing Manager or Assistant Housing Manager rather than the project size.

13. *Section 867.304. Requirement for Certification—Temporary Appointments.* Several comments expressed concern for situations where it may be necessary to fill the position of Housing Manager or Assistant Housing Manager shortly before the applicable effective date in this section, and indicated that such persons should be given additional time within which to obtain certification. To cover this contingency, paragraph (c) has been added to provide a Probationary Certificate not to exceed two years.

14. *Section 867.304. Required Certification—PHA Identification of Positions.* As mentioned in items 2. and 6. above, an additional paragraph (d) has been included in § 867.304 which provides that each PHA shall submit to an Approved Certifying Organization a list of the positions and names of persons for whom certification will be required. This submission must be made not later than 90 days prior to the effective date of the certification requirement, and is intended to provide the basic method for the identification of employees for whom certification will be required. In addition, each PHA may submit the names of persons for whom certification, although not required, is desired.

15. *Section 867.304. Inclusion of Grandparent Clause.* Several comments suggested that the Regulation provide for "grandparent clause" (a provision under which any present Housing Manager or Assistant Housing Manager could be automatically certified upon review of his/her duties and length of service). Accordingly, § 867.304(d) has been revised to authorize certification based solely upon acceptable on-the-job performance for a minimum number of years.

16. *Section 867.305. Continuation of Salaries During Appeals.* This section provides that salaries of Housing Managers and Assistant Housing Managers who do not meet the certification requirements under § 867.304 will not be eligible operating expenditures for PHA budgets. Several comments suggested that such salaries be continued during an appeal pursuant to § 867.309. This suggestion has been adopted and the section has been amended accordingly.

17. *Section 867.305. Application to Salaries in PHAs Not Receiving Operating Subsidies.* Several comments requested clarification as to the effect of this section where a PHA does not receive operating subsidies. The section has been revised to make it clear that certification will be required of all Managers and Assistant Managers of PHA-owned housing units regardless of whether the PHA receives operating subsidies.

18. *Section 968.305. Fiscal Year in Which Initially Effective.* The section has been amended to minimize the hardship that might be caused some PHAs because of differences in the commencement dates of their fiscal years. The phrase "for fiscal years commencing subsequent to the applicable effective date in section 867.304 has been changed to "beginning with the budget for the first fiscal year which starts at least four months after the date on which certification is required for any Housing Manager or Assistant Housing Manager."

19. *Section 867.306. Application to Salaries in PHAs with Civil Service Systems.* Several comments requested clarification as to the effect of this section on the budgets of PHAs which operate pursuant to state or local civil service laws and personnel procedures. Such PHAs would be required to continue to pay the salaries of those incumbent Housing Managers or Assistant Housing Managers who had achieved a tenured status although these salaries would not be eligible operating expenditures in budgets submitted to HUD. The Regulation has been amended in response to these comments by the addition of § 867.306, which is discussed below. (See also discussion under item 15. above.)

20. *Section 867.306. Compliance with Civil Service Laws and Notice of Termination Procedures.* This section has been added to the Regulation to provide that the termination of any salary pursuant to § 867.305 shall not occur during such period as may necessarily be involved in compliance by the PHA with notice of termination and related procedures pursuant to state or local law or the PHA's approved personnel practices. In addition, the allowance of such salaries as approvable budget items shall not terminate if it should be determined as a result of administrative and/or judicial proceedings that under applicable civil service or other state or local laws that the official's services may not be legally terminated on grounds of his failure to obtain certification.

21. *Section 867.307. Costs of General Education.* This section provides that the costs of specialized training directly related to qualifying for certification shall be eligible operating expenditures in PHA budgets. Costs of general education courses were originally excluded, but comments were received regarding minority groups, compensatory education, and the possible withdrawal of some people from a certification program because of inability to finance general, compensatory education courses required by the program as a minimal level for eligibilty for certification. Accordingly, this section has been amended to allow costs of general education as eligible expenditures where the education is a requisite of employment by reason of the criteria established by the certifying organization.

22. *Section 867.307. Availability of VA Benefits for Training.* One comment suggested that HUD make arrangements with the Veterans Administration to recognize Approved Certifying Organizations as eligible institutions for purposes of receipt of VA benefits. This suggestion does not require any change in the Regulation. It can be considered administratively at the appropriate time.

23. *Section 867.308. Revocation or Suspension of Certification.* This section has been added to the Regulation to provide for the revocation or suspension of certification by the Approved Certifying Organization which granted the certification, or by its successor, or by HUD (if there be no successor), based upon grounds which are specified in paragraph (a) of this section.

24. *Section 867.308. Notice by the Approved Certifying Organization.* The Regulation has been amended to provide that the Approved Certifying Organization shall serve a written notice on the certified Housing Manager or Assistant Housing Manager when revocation or suspension is being considered. The notice shall set forth in reasonable specificity the reasons for the proposed action and shall advise the person that he has a specified number of days, which shall be at least 15 days from receipt of the notice, to respond in writing or to request an informal hearing. If the certified person does not respond within the specified period, the Regulation provides that the Approved Certifying Organization may revoke or suspend the certification and shall immediately so advise the certified person, the PHA and HUD.

25. *Section 867.308. Presentation of Evidence by Certified Person and Determination by the Approved Certifying Organization.* This section has been added to the Regulation to indicate that a Housing Manager or Assistant Housing Manager whose certification may be revoked by an Approved Certifying Organization may present evidence and arguments in opposition to the proposed revocation or suspension. The certified person may elect to present evidence in writing, at an informal hearing, or both. He may also confront and cross-examine witnesses.

Paragraph (c) also provides that the Approved Certifying Organization shall make its determination upon the evidence presented and shall set forth its findings with reasonable specificity when its decision is to revoke or suspend the certification.

26. *Section 867.308. Right of Appeal.* A new paragraph (d) has been added which provides that an appeal from the determination made by the Approved Certifying Organization as to revocation or suspension of certification may be taken by either the local PHA or the Housing Manager or Assistant Housing Manager involved, in accordance with § 867.309.

27. *Section 867.309. Appeals-Right to Hearing.* The section as proposed provided that appeals to the Secretary would be based on written presentations only. However, the Regulation has been amended to provide for a hearing by the Approved Certifying Organization at the request of the appellant, at which he may be represented or accompanied by a person of his choice and afforded an opportunity to present oral testimony and to cross-examine witnesses.

28. *Section 867.309. Appeals—Decision by the Approved Certifying Organization or the Secretary.* A new paragraph (c) has been added which provides that the Approved Certifying Organization shall consider the appeal on the record and on

the basis of the evidence presented and shall have the right to add to the record affidavits, testimony or relevant information in support of the appellant or the denial, suspension or revocation of certification.

29. *Section 867.309. Appeals—Time for Decision by Approved Certifying Organization.* Several comments suggested that the section was vague with regard to the time period within which the Approved Certifying Organization must render a decision, and the time for retention of appeal records and documentation. The section has been amended in response to these comments to required retention of materials for a 90-day period following the decision thereon, and to require the decision by the Approved Certifying Organization "as promptly as possible (generally within 90 days from the filing date of the petition)."

30. Since a parallel amendment to HUD regulations is being issued shortly to cover Mortgage Insured Projects, it was felt that since management was a generic process, a single approach should be employed throughout the two issuances. To that end, some additional amendments were made, resulting in a more uniform approach, even though the two processes, public housing and mortgage insurance, have some significant differences. These amendments include the addition of probationary certificates, and a uniform terminology, wherever feasible.

The Secretary has determined that this Amendment does not have a substantial environmental impact and a finding of inapplicability is available for public inspection in the office of the Rules Docket Clerk, Room 10141, 451–7th Street, S.W. Washington, D.C. during regular business hours.

(It is hereby certified that the economic and inflationary impacts of this proposed rule have been carefully evaluated in accordance with OMB Circular A–107.)

Accordingly, Title 24 is amended by adding a new Part 867, PHA-owned Projects-Personnel Policies and Compensation, and within it, a new Subpart C, Certification of Housing Managers, to read as follows:

Subpart A–B (reserved)

Subpart C—Certification of Housing Managers

Sec.

AUTHORITY: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); sec. 6(c)(4) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437d); sec. 201(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 1437 note).

Subpart A–B [Reserved]

Subpart C—Certification of Housing Managers

§ 867.301 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to

(1) Establish the requirement for the Certification of Housing Managers and Assistant Housing Managers; and

(2) Provide for such Certification by HUD-approved professional organizations or other entities.

(b) *Scope.* The requirements set forth in this subpart shall be applicable to all low-income housing projects assisted under the United States Housing Act of 1937 (Act) which are owned by Public Housing Agencies (PHAs) and to all PHAs administering such projects.

§ 867.302 Definitions.

Approved Certifying Organization. Any organization(s) or entity(ies) approved by HUD, pursuant to § 867.303, which will administer a program for certification of a housing manager or assistant housing manager under this Subpart.

Housing Manager. Any person who, irrespective of title, is responsible for the day-to-day management and operation, which may include the supervision of employees, of a low-income housing project or projects subject to this Subpart.

Assistant Housing Manager. Any person who, irrespective of title, is responsible for assisting a Housing Manager in performing his/her managerial responsibilities.

HUD. The Department of Housing and Urban Development or its designated officer or employee.

Certification. The process by which an Approved Certifying Organization determines and certifies that an individual has met predetermined qualifications which are deemed to constitute a level of proficiency adequate to achieve and/or maintain the essential social, fiscal, environmental, equal opportunity, and administrative goals of the low-income housing program established under the Act, the Annual Contributions Contract and HUD regulations issued pursuant thereto for the management of low-income housing projects.

§ 867.303 HUD approval of certifying organizations.

(a) *Approval Procedure.* Any national housing management organization may apply to HUD for approval for the purpose of providing certification of individuals as Housing Managers or Assistant Housing Managers. HUD's Certification Review Committee will evaluate applicant organizations upon their past performance in the field of housing management and compliance with HUD's non-discrimination policies and the suitability of the programs submitted. Every applicant shall submit to HUD appropriate evidence that such organization:

(1) Has the experience and capacity to deal with low-income housing management processes with significant emphasis on housing projects assisted under the Act or assisted under other Federally or State-assisted programs;

(2) Has developed a certification program which includes:

(i) Specific criteria and standards for qualifying for certification in accordance with paragraph (f) of this section,

(ii) Suitable procedures which will afford any person the opportunity to apply for certification and receive certification if he/she meets the standards, and

(iii) A right of appeal as set forth in § 867.309,

(iv) Suitable procedures which provide for a Probationary Certificate.

(b) The HUD Certification Review Committee shall evaluate the evidence submitted by the organization in accordance with paragraph (a) of this section and will determine in its discretion, on the basis of that evidence and such other material as may be relevant, whether the qualifications of the organization meet the criteria set forth in paragraph (a) of this section. If the qualifications are satisfactory, HUD shall notify the organization of its approval as a certifying organization.

(c) In the event HUD denies approval of the organization, the notification to the organization shall set forth the reasons for HUD's action in sufficient detail so as to enable the organization to request reconsideration of the determination.

(d) *Periodic Review of HUD Approvals.* The standards, criteria and program for enabling persons to qualify for certification shall be subject to periodic review and reapproval or disapproval not less than annually by the HUD Certification Review Committee. Such periodic review shall include the procedures and methods by which the organization incorporates in its training, evaluation and certification program the current regulations, policies and procedures of HUD as well as due process protection for the persons certified or applying for certification.

(e) *Publication of Names and Standards of Approved Certifying Organizations.* A current list of Approved Certifying Organizations and their standards and criteria shall be published in the FEDERAL REGISTER as organizations are approved or reapproved by HUD for the purpose of providing certification of Housing Managers and Assistant Housing Managers, and shall be sent to all PHAs and State Housing Agencies in the form of a notice.

(f) *Criteria and Standards.* The criteria and standards for qualifying for certification shall in all cases be reasonably related to job requirements and shall take into account minimum levels of experience and education and may consider training, aptitude, performance, Civil Service status, and accomplishments in the field of housing management (including certification based solely upon acceptable on-the-job performance for a minimum number of years). The criteria and standards shall take into account the special requirements of small housing authorities, and management of elderly/non-elderly housing, homeowner-

ship-opportunity housing, Indian and Native American housing, and housing in rural/densely populated areas and remotely-located areas. The organization may consider other housing management training programs and may adopt, where appropriate, standards that reflect or give effect to such programs.

§ 867.304 Requirements for certification.

(a) *Housing Managers of 75 or More Units.* Subject to paragraph (c) of this section, effective January 1, 1979, any person employed as a Housing Manager of 75 or more dwelling units shall be required to have certification as a housing manager from an Approved Certifying Organization.

(b) *Assistant Housing Managers.* Subject to paragraph (c) of this section, the requirements for certification shall apply to any person employed as an Assistant Housing Manager effective January 1, 1979, if such employment is with respect to 75 or more dwelling units; except that said requirements shall not apply if on the applicable effective date such person is in process of qualifying for certification and is working under the supervision of a housing manager who has certification if such certification is required at that time.

(c) *Probationary Certification.* In order to provide latitude to hire an individual who may not meet the initial qualifications for certification, at hiring, but who has potential, the Approved Certifying Organization may issue a probationary certificate for a period of one year. The Approved Certifying Organization may extend the term of the probationary certificate for one additional year in order to allow the applicant sufficient time to obtain a certificate. In no case may the probationary certificate be in effect for longer than two years.

(d) *Identification of Positions and Persons To Be Certified.* Not later than 90 days prior to the date by which certification is required pursuant to this section, each PHA shall submit to an Approved Certifying Organization and to HUD, the positions and names of those for whom, in the judgment of the PHA, certification as Housing Manager or Assistant Housing Manager is required. The PHA may also submit the positions and names of persons for whom certification, although not required, is desired.

§ 867.305 Salaries of housing managers and assistant housing managers.

Except as provided in § 867.306, in budgets submitted by PHAs to HUD, beginning with the budget for the first fiscal year which starts at least four months after the date on which certification is required for any Housing Manager or Assistant Housing Manager, the salary of such person, if certification has not been obtained, shall not be considered an eligible operating expenditure (whether or not operating subsidy is required) nor shall such salary be approved as a budget item for the purpose of operating subsidy eligibility; provided, however, that these prohibitions shall not apply during the pendency of an appeal filed pursuant to section 876.309. Beginning with that same fiscal year and thereafter, the current certification status of all Housing Managers and Assistant Housing Managers shall be submitted by PHAs to HUD along with the Annual Budget.

§ 867.306 Compliance with Civil Service laws and notice of termination procedures.

If a Housing Manager or Assistant Housing Manager is denied certification or certification is suspended or withdrawn and no longer has any appeal pending under this part, the allowance of any salary as an approvable budget item shall terminate, except for such period as may necessarily be involved in compliance by the PHA with notice of termination and related procedures pursuant to state or local law or the PHA's approved personnel practices. Nor shall the allowance of his salary as an approvable budget item terminate if it should be determined as a result of administrative and/or judicial proceedings that under applicable civil service or other state or local laws that the official's services may not be legally terminated on grounds of his failure to obtain certification under this Part.

§ 867.307 Costs of training and certification.

Costs of specialized training directly related to qualifying for Certification, and costs of general education [but only where such education is a requisite of employment by reason of the criteria established by the certifying organization(s)], shall be includable as eligible expenditures in the PHA budgets submitted to HUD. Such training must be approved by an Approved Certifying Organization or by HUD, and be designed to enhance the skills of the trainee for the purpose of qualifying for certification. Where the PHA wishes to pay the costs of certification for the applicant employed as of the date of issuance of this regulation, such costs shall be includable as eligible expenditures in the PHA budgets submitted to HUD.

§ 867.308 Denial, revocation or suspension of certification.

(a) *Grounds for Denial, Revocation or Suspension of Certification.* Pursuant to the procedures set forth in paragraph (b) of this section, certification may be denied, revoked or suspended by the Approved Certifying Organization which granted the certification or by its successor, or if there be no successor, by HUD, for the following:

(1) Acts of fraud, deceit or misrepresentation in obtaining the certification.

(2) Acts of gross negligence, incompentency or misconduct in carrying out the duties of Housing Manager or Assistant Housing Manager.

(3) Conviction of a crime involving moral turpitude.

(4) Willful disregard of the regulations and requirements applicable to the public housing program.

(b) *Notice by the Approved Certifying Organization.* The Approved Certifying Organization shall serve a written notice on the certified person that denial, revocation or suspension is being considered and shall set forth in the notice with reasonable specificity the reasons for the proposed action. Said notice shall also advise the certified person that he has a specified number of days, which shall be at least 15 days from receipt of the notice, to respond in writing or to request an informal hearing. If the certified person does not respond within the specified period, the Approved Certifying Organization may revoke or suspend the certification and shall immediately so advise the certified person, the PHA and HUD.

(c) *Presentation of Evidence by Certified Person and Determination by the Approved Certifying Organization.* The certified person may examine and, at his expense, copy all documents, records and regulations of the Approved Certifying Organization that are relevant to the matter. The certified person shall have the right to present evidence and arguments in opposition to the proposed revocation or suspension and to controvert evidence relied on by the Approved Certifying Organization and he may elect to do this in writing, or at the informal hearing, or both. Whenever a certified person requests an informal hearing, he shall be entitled to confront in a reasonable manner and crossexamine all witnesses on whose testimony or information the Approved Certifying Organization relies. Evidence pertinent to the issues in the Approved Certifying Organization's notice may be received and considered without regard to its admissability under rules of evidence employed in judicial proceedings. Upon considering all evidence and arguments presented, the Approved Certifying Organization shall determine whether Certification should be revoked or suspended and shall promptly advise the certified persons of its determination. Testimony shall be recorded in some form and such records shall be maintained for a period of not less than 90 days. Whenever the Approved Certifying Organization's decision is to revoke or suspend Certification, the notice shall set forth with reasonable specificity the Organization's findings. A decision to revoke or suspend Certification shall not preclude the Approved Certifying Organization from making subsequent determination that a certified person should be reinstated.

(d) Either the PHA or the Housing Manager or Assistant Housing Manager may appeal the determination made by the Approved Certifying Organization pursuant to this section, in accordance with § 867.309.

§ 867.309 Appeals.

(a) Any person required to hold certification as a Housing Manager or Assistant Housing Manager under § 867.303 of this subpart, and who is denied certification or whose certification has been revoked or suspended by an Approved

Certifying Organization, may, at his option, file an appeal with the Approved Certifying Organization.

(b) The appellant shall have the right to request a hearing. If a hearing is requested, it shall be one at which he is represented or accompanied by a person of his choice. The appellant shall be afforded an opportunity to present oral testimony and to cross-examine witnesses.

(c) The Approved Certifying Organization shall consider the appeal on the record and on the basis of the evidence presented and shall have the right to add to the record affidavits, testimony or relevant information in support of the appellant or the denial, suspension or revocation of certification, and as promptly as possible (generally within 90 days from the filing date of the appeal), the Approved Certifying Organization shall render a decision thereon setting forth the reasons therefor. A copy of the decision shall be furnished to the appellant and to HUD.

(d) All materials filed or submitted in regard to an appeal under this section shall be maintained for not less than 90 days following the decision thereon and shall be available for public inspection to the full extent of the law.

Effective date: These regulations shall be effective on September 29, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc.76-28205 Filed 9-28-76;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART V:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing— Federal Housing Commissioner

■

DELIVERY OF ONE-TO-FOUR FAMILY PROPERTIES OCCUPIED BY TENANTS OR FORMER MORTGAGORS

Criteria

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING, FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-377]

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Delivery of One-to-Four Family Properties Occupied by Tenants or Former Mortgagors

On March 19, 1976, at 41 FR 11553, the Department published a notice of proposed rulemaking, pursuant to 12 U.S.C. 1715b as amended, to revise 24 CFR 203.381 to establish criteria for determining when HUD will accept delivery of one-to-four family properties with tenants or former mortgagors in such properties. April 22, 1976, was established as the deadline for receipt of comments and other pertinent data to be considered before adoption of the final rule. More than 80 responses were receiver and considered in adopting the final regulation contained herein. A summary of the most frequently received comments and other considerations involved in adopting the final regulation follows.

A substantial number of comments were received in connection with the proposed procedures as they related to criteria for HUD approval of mortgagor-occupied conveyance, with particular reference to the different, and what was considered to be more stringent, requirements than those provided for tenant-occupied conveyance. As a result of these comments, a critical analysis was made of the mortgagor-occupied conveyance issue with specific reference given to recent revised HUD procedures for forbearance and assignment of defaulted mortgages to HUD. It was determined that the extensive remedies available to defaulted mortgagors to avoid foreclosure, and hence the necessity of HUD's acquisition of their properties, obviated any need for further consideration of continued occupancy. Thus, mortgagors who are unable to qualify for avoidance of foreclosure would also be unable to meet the tenant-occupant conveyance criteria of the vacant delivery regulations. Thus, the vacant delivery regulation has been further revised to eliminate consideration of mortgagor requests for occupied conveyance. To do otherwise would be to hold out false hopes to mortgagors, and to place unnecessary workload burdens on local HUD Area and Insuring offices.

Numerous comments expressed concerns about the time-frame requirements for required actions, HUD's probable inability to discharge its responsibilities for actions in a timely manner, or adverse effects accruing to lenders resulting from inordinate delays in the process. Further concerns were expressed about the difficulties for lenders to exactly foretell the date of acquisition of title to property in order to meet the 60 and 90 day prior notice requirement, or that the required notice does not meet State statutes regarding notice of foreclosure sale. A safety valve provision was incorporated in the final regulations which provides that the mortgagee may convey properties occupied if HUD does not request vacant delivery within 90 days after mailing of the mortgagee's notice to the tenants of their right to request continued occupancy. The 60 to 90 day notification was reworded to be based on the date on which the mortgagee reasonably expects to acquire title. The notice required by these revisions to the regulations is not intended to be a substitute for, or necessarily coincide with, notice requirements of local statutes.

A number of comments raised objections to the need for the revisions, the overall concept of the revisions, the perceived ambiguity or severeness of the revisions, or suggested that HUD should accept all properties occupied. HUD has not found any basis to alter its previous position that, generally, it is in the Department's best interest to require vacant conveyance of properties by the mortgagees. It is recognized, however, as it was under the existing regulation, that under certain conditions it is mutually beneficial to HUD and certain occupants to permit occupied conveyance. As noted previously, such occupied conveyance is to be limited to tenants. Also, as stated in the notice of proposed rules, recent court decisions call for the Secretary to adopt regulations setting forth the criteria which will be used in determining whether HUD will insist on "vacant delivery" or will accept the property occupied.

Other comments cited heavy workload burdens placed on the mortgagee by the revised regulations, suggested HUD deal directly with occupants, and objected to the performance by the lender of certain duties such as obtaining executed leases or sales contracts, rental deposits or purchase downpayments, and determining the eligibility of either properties or occupants under the criteria set forth. Requirements under the revised regulations for performance by the mortgagee are limited to furnishing the prescribed written notification to tenants of the pending acquisition of the property within 60 to 90 days of the date the mortgagee reasonably expects to acquire title. HUD retains the responsibility for inspection of the properties, the determinations as to the eligibility of properties and tenants for occupied conveyance, and appropriate notice of HUD decisions to tenants requesting occupied conveyance.

A number of comments indicated that fair market rentals may well result in tenants having to pay higher rents than previously; that credit should be given to tenants for deposits made prior to acquisition; or that requirements for the condition of the property should be relaxed to include defects which can be cured with tenants in occupancy. Conversely, comments noted that tenants may not necessarily be blameless regarding the foreclosure because they may not have paid rent previously. It is HUD's determination that the best course of action is not to consider conditions or circumstances prior to HUD's acquisition of the property. There is no basis for HUD as current owner of properties to accept less than fair market rental or to assume responsibility for deposits paid prior to acquisition, a matter between the tenant and the deposit recipient. Further, whether the tenant did or did not pay rent previously; to whom; under what circumstances; or how to ascertain such facts or resolve possible disputes, are matters in which HUD should not become involved. Additionally, it is HUD's general position that properties are repaired more easily and more quickly and at less cost when vacant.

Several comments were made to the effect that tenants should be afforded the opportunity to purchase properties they occupy at time of conveyance and questioned the legality of HUD leasing properties prior to its ownership of the properties. Existing HUD disposition procedures provide for the right of first refusal to purchase for tenants of HUD acquired properties. Such procedures will come into play for tenants of acquired properties as a result of HUD approved occupied conveyance. On the second point, HUD would execute leases with tenants, subject to and effective upon HUD's acquisition of the properties.

Other comments presented the position that HUD's devised regulation does not comply with related court rulings or that NEPA requirements were not met. As indicated in the original notice of proposed rules, HUD did conduct an environmental clearance in accordance with outstanding CEQ guidelines and made a finding of inapplicability. It s HUD's position that it has complied with applicable court orders and rulings.

Comments were received to the effect that HUD could not rightly levy additional requirements upon mortgagees under existing contracts of mortgage insurance, or in the alternative, that increased costs, including the cost of certified mail postage be allowable in mortgage insurance claims. Clarification was also requested regarding the number of copies to be sent to HUD of the mortgagee's notice to the tenant(s). HUD does not interpret the revised requirements for notice to tenants to be a substantive addition of requirements upon the mortgagee beyond that already inherent in the activities of servicing the mortgages and, acquiring good marketable title to, and conveying properties to HUD. The regulation calls for one notice from the mortgagee to the tenant, one copy of which is to be sent by certified mail and one copy of which is to be sent by regular mail. Since there is but a single notice, two copies of which are sent to the tenant, HUD needs only one copy of the notice.

Other comments suggested the need for standardized language to be used in the mortgagee notice to tenants, and applicable instructions to mortgagees in the form of a Mortgagee Letter. Concurrently with publication of the final revised regulations, HUD intends to issue such instructions as well as appropriate

internal instructions to local HUD field offices. Sample standardized language, as a suggested form letter, will be included in such instructions as a guide to the minimum essential elements of the required notice.

A few comments suggested the need for (1) additional language to define livability, marketability and financial ability, (2) additional requirements for HUD advising the tenant of its reasons for a negative determination in connection with its reconsideration of the original negative determination, and (3) additional provisions for occupied conveyance based on hardship cases or other social reasons. It is felt that the terms livability, marketability and financial ability are generally broadly understood terms. HUD's determination of such elements will be in keeping with its day-to-day acquired property disposition program determinations based on the circumstances involved; as well as localized conditions which may apply. With regard to the marketability of properties, such determinations will be based on a considered judgement of such factors as the total number of properties owned by HUD in the area, past experiences with the numbers of properties acquired and sold by HUD each month, and other circumstances which may have a direct bearing on the prospects for sale of the property. Where such factors are determined to be significant, consideration will be given to increased marketability resulting from tenant occupancy which prevents extensive vandalism and/or provides immediate rental income desirable to prospective purchasers in two-to-four family properties. HUD's reconsideration of its original negative determination regarding occupied conveyance will be based on the reasons originally furnished the tenants and such oral or written information as is furnished by the tenants in support of their request for continued occupancy. HUD's previous provisions for occupied conveyance based on hardship cases and other social criteria were confined to former mortgagors for whom provisions have been made in the aforementioned expanded assignment and modification agreements.

It should be noted that existing HUD procedures provide for tenants of HUD acquired properties to be given a 30 day right of refusal to purchase when the properties they occupy are programmed for sale, provided such tenants meet applicable mortgage credit requirements or otherwise have the financial ability to buy. The sales prices shall be at fixed prices equivalent to the stated minimum acceptable prices otherwise developed by HUD for sales listings. Accordingly, tenants who continue in occupancy of properties upon acquisition by HUD will be covered by such existing procedures.

Several comments expressed agreement in toto with the proposed revisions or indicated a generally favorable reaction.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. It is hereby certified that the economic impacts of this rule have been carefully evaluated in accordance with OMB Circular A–107. Copies of these findings of Inapplicability are available for inspection at the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C.

Accordingly, § 203.381 of Chapter II of Title 24 of the Code of Federal Regulations is amended as follows:

§ 203.381 Occupancy of property.

(a) The mortgagee shall certify that the property is vacant and contains no personal property as of the date of filing for record of the deed to the Secretary or that the property is being conveyed subject to occupancy under the conditions stated in paragraph (b) of this section.

(b) The Secretary shall accept a conveyance of property with a tenant or tenants other than the former mortgagor in occupancy if the Secretary finds after inspection of the property that:

(1) The property in its present condition is structurally sound, free from all health and safety hazards and is a habitable dwelling, and

(2) There is no reasonable prospect of sale of the property within six months after the date the property is conveyed to the Secretary or the marketability of the property would be improved by retaining the tenant occupant or occupants (marketability will be determined on the basis of such factors as the total number of properties owned by HUD in the area, past experience with the numbers of properties acquired and sold by HUD each month, and such other circumstances as may have a direct bearing on the prospects for sale of the property such as possible increased marketability if tenant occupancy has been helpful in the immediate area in (i) preventing extensive vandalism or (ii) in attracting prospective purchasers of two-to-four family properties through the availability of immediate rental income.), and

(3) The tenant or tenants (i) will have been in occupancy at least 60 days prior to the date the mortgagee acquires title to the property, (ii) have the financial ability to make monthly rental payments, (iii) execute a month-to-month lease at fair market rental on a form prescribed by the Secretary, and (iv) to tender one month's advance rent at the rate set forth in the lease prior to conveyance of the property to the Secretary.

(c) At least sixty days, but not more than ninety days, prior to the date on which the mortgagee reasonably expects to acquire title to the property, the mortgagee shall notify the tenant or tenants in occupancy, if any, that:

(1) Acquisition of the property through foreclosure is pending.

(2) The Secretary will accept the property occupied by the tenant or tenants under the conditions prescribed in paragraph (b) of this section. If such conditions are not met after an inspection of the property by the Secretary, it is the Secretary's intention to require vacant transfer of the property.

(3) If the tenant or tenants desire to remain in occupancy after the property is conveyed to the Secretary, they must notify the Area or Insuring Office, in writing, within 20 days of the mailing of the notice to the tenant. If they fail to timely notify the Area or Insuring Office of the desire to remain in occupancy, the Secretary may require vacant transfer of the property without further notice to them.

(d) The mortgagee shall forward a copy or copies of such notice to the Area or Insuring Office having jurisdiction of the property concurrently with the mailing of the notice to tenants. For purposes of compliance with this section, the notice shall be considered to have been received by the tenant if it is mailed by certified mail, return receipt requested, and by regular mail to such tenant at the property address.

(e) When the Secretary makes a decision, those tenants who timely notified the Area or Insuring Office in accordance with paragraph (c)(3) of this section shall be advised of the decision and the reasons for such decision. The Secretary shall also advise such tenants that the Secretary will reconsider the decision if the tenant or tenants furnish written or oral information which warrants reconsideration of the decision to require vacant transfer of the property. Such information or evidence must be furnished to the Area or Insuring Office (1) within 20 days after the mailing of notice of the Secretary's decision not to accept transfer of the property occupied, if the information is submitted in writing, or (2) at a conference with representatives of the Secretary, provided the tenant or tenants request such conference in writing within ten days after the mailing of the notice.

(f) Upon timely submission of written or oral information by the tenant or tenants, the Secretary shall review the matter and render a final decision to require the mortgagee to convey the property occupied or vacant. The mortgagee and the tenant or tenants shall be notified of the Secretary's decision.

(g) In the event any tenant or tenants fail to notify the Area or Insuring Office as provided in paragraph (c)(3) of this section, the mortgagee will be directed to convey the property vacant as to such tenants.

(h) Within 15 days after notification to the tenant of the Secretary's determination to accept a property with a tenant or tenants in occupancy, the tenant or tenants are required to (1) execute a lease on a form prescribed by the Secretary and (2) tender one month's advance rent at the rate set forth in the lease. Failure of the tenant or tenants to comply with these requirements shall be cause for the Secretary to determine that the property shall be conveyed vacant as to such tenant or tenants.

(i) At the expiration of 90 days after the mortgagee provides the notice requested in paragraphs (c) and (d) of this section, the mortgagee may convey the property occupied by a tenant or tenants unless the Secretary notifies the mortgagee to convey the property vacant as to such tenant or tenants.

(j) Compliance with this section shall not relieve the mortgagee of its general duty to convey good marketable title to the property.

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

Effective date: This amendment is effective on September 29, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing,
Federal Housing Commissioner.

[FR Doc.76-28296 Filed 9-28-76;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART VI:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

FIRE SAFETY EQUIPMENT IN HEALTH CARE FACILITIES

Insurance of Loans

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 201]

[Docket No. R-76-416]

FIRE SAFETY EQUIPMENT IN HEALTH CARE FACILITIES

Insurance of Loans

The Department of Housing and Urban Development is considering amending Subtitle B of Title 24 of the Code of Federal Regulations, Chapter II, Subchapter B, Part 201, "Property Improvement and Mobile Home Loans," by adding a new Subpart C, "Loans to Finance the Purchase and Installation of Fire Safety Equipment," in nursing homes, extended health care facilities, intermediate care health facilities, and other comparable health care facilities. The amendments will implement section 309 (b)(1), (3) of the Housing and Community Development Act of 1974, Pub. L. 93-383, which provides for insurance of financial institutions in the making of loans to finance the purchase and installation of fire safety equipment in health care facilities.

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or statements with regard to the proposed regulations. Communications should be addressed to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All relevant material received by October 29, 1976, will be considered before adoption of a final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

The Department has determined that this amendment would not have a substantial environmental impact and a Finding of Inapplicability is available in the office of the Rules Docket Clerk at the above address.

The proposed amendments are as follows:

1. In § 201.12, paragraph (b) is proposed to be amended to read as follows:

§ 201.12 Insurance reserve.

* * * * *

(b) There shall be maintained for each insured a general insurance reserve which shall equal 10 percent of the aggregate amount advanced on all eligible loans originated by such insured pursuant to the provisions of the regulations in Subpart A, B, and C * * * of this Part on and after March 1, 1950, and prior to the expiration of the Secretary's authority to insure under the provisions of this Act, less the amount of all claims approved for payment by the Secretary in connection with such loans and less the amount of any adjustments made pursuant to paragraph (c) of this section.

2. In Part 201 a new Subpart C is proposed to be added to read as follows:

Subpart C—Loans To Finance the Purchase and Installation of Safety Equipment

Sec.

AUTHORITY: Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, 12 U.S.C. 1703 as amended by P.L. 93-383.

Subpart C—Loans To Finance the Purchase and Installation of Fire Safety Equipment

§ 201.1105 Purpose of subpart.

The provisions of this Subpart contain the requirements under which an insured financial institution may obtain insurance of loans made for the purchase and installation of fire safety equipment for nursing homes, extended health care facilities, intermediate health care facilities and other comparable health care facilities.

§ 201.1110 Definitions.

As used in the regulations in this Subpart the following terms shall have the meaning indicated.

(a) "Secretary" means the Secretary of Housing and Urban Development or a HUD official delegated the Secretary's authority with respect to the Act.

(b) "Contract of insurance" includes all of the provisions of the regulations in this subpart, § 201.12 and the applicable provisions of the Act.

(c) "Form" means a document which is approved by or satisfactory to the Secretary.

(d) "Insured" means an approved financial institution holding a contract of insurance under Title I of the Act.

(e) "Loan" means an advance of funds or credit or the purchase of an obligation.

(f) "Note" means a note, bond, or other obligation that is evidence of indebtedness.

(g) "Fire safety equipment" means any device or facility which is designed to reduce the risk of death, personal injury or property damage resulting from fire in nursing homes, extended health care facilities, and intermediate health care facilities, or other comparable health care facilities, which are provided for or required under the 1973 edition of the Life Safety Code of the National Fire Protection Association (NFPA-101-73), and NFPA-13-1973, Standards for Installation of Sprinkler Systems.

(h) "Nursing home" means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or if there is no state law providing for licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical services, in which such nursing care and related medical services are prescribed by, or are performed under the general direction of the persons licensed to provide such care or services in accordance with the laws of the State where the facility is located.

(i) "Intermediate care facility" means a proprietary facility or facility of a private non-profit corporation or association licensed or regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or the political subdivision in which the facility is located), for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical care or nursing services.

(j) "Extended health care facility" means a health care facility providing community service for inpatient care for

convalescents or chronic disease patients who require skilled nursing care and related medical services.

(k) "State" means any State of the United States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(l) "Fire safety loan" means any form of secured obligation as may be determined by the Secretary to be eligible for insurance under this subpart.

(m) "Equipment cost" means the reasonable cost of "fire safety equipment," fully installed, as evidenced by a legally binding contract between the borrower and the contractor.

(n) "Insured loan maturity" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for in the loan instrument or instruments.

(o) "Borrower" means an owner of a health care facility who applies for and receives a loan in reliance upon the provisions of the Act.

(p) "Health care facility" means a "nursing home", "intermediate care facility", "extended health care facility", or other comparable facility.

(q) "Actuarial method" means the method of allocating payments made on an obligation between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

(r) "Act" means the National Housing Act, as amended, 12 U.S.C. 1703.

MAXIMUM LOANS, FEES AND CHARGES

§ 201.1115 Maximum and minimum loan amounts.

The principal amount of the loan shall not exceed the actual cost of the fire safety equipment, including the cost of installation, or $50,000, whichever sum is the lesser. The minimum principal amount shall be $10,000.

§ 201.1120 Method of loan payment and amortization period.

(a) *Monthly payments.* The loan shall provide for equal monthly payments in accordance with amortization tables provided by the Secretary.

(b) *Amortization period.* The term of the loan shall not exceed 25 years and 32 days.

§ 201.1125 Application and application fee.

(a) *Prior approval.* An application for insurance of a fire safety loan under this part shall be considered only in connection with a proposal which has been approved by the Fire Safety Marshall or other state or local official or agency, or other authority having primary responsibility or jurisdiction for the fire safety requirements of the health care facility.

(b) *Filing of application.* An application for insurance of a fire safety loan for a nursing home or intermediate care facility, extended health care facility, or other comparable health care facility shall be submitted on an approved form by an approved lender and the owners of such facility to the local HUD office, for prior credit approval. It shall be accompanied by a proposal meeting the requirements of paragraph (a) of this section, and a copy of the contract between the borrowers and the contractor. Upon approval of the application, a letter shall be issued by the Secretary setting forth the terms and conditions upon which the fire safety loan will be deemed eligible for loan insurance.

§ 201.1130 Maximum charges.

(a) The loan shall bear interest at the rate agreed upon by the borrower and lender, which rate shall not exceed eleven (11) percent per annum.

(b) The loan shall be payable in equal monthly installments which shall include:

(1) Insurance charges payable to the Secretary by the lender.

(2) Interest on the loan.

(3) Amortization of the principal amount of the loan.

(c) The lender may collect from the borrower an amount of the fees provided for in this Subpart. The lender may also collect from the borrower an initial service charge in an amount not to exceed one and one-half percent of the original principal amount of the loan to reimburse the lender for the cost of originating and closing the transaction. Any additional charges shall be subject to the prior written approval of the Secretary.

ELIGIBLE BORROWERS

§ 201.1135 Eligible borrowers.

In order to be eligible as a borrower under this subpart the applicant shall be an owner of a nursing home, extended health care facility, intermediate care facility or other comparable health care facility where the installation of fire safety equipment in such facility is provided for or required by the fire safety requirements of the 1973 Life Safety Code of the National Fire Protection Association (NFPA–101–73) or NFPA–13–1973, Standard for the Installation of Sprinkler Systems.

PROPERTY REQUIREMENTS

§ 201.1140 Eligibility of property.

(a) A health facility to be eligible for insurance shall be real estate held:

(1) In fee simple; or

(2) [Reserved.]

(3) [Reserved.]

(b) The health care facility must be owned by an eligible borrower as herein defined and must, at the time the loan is insured, be free and clear of all liens other than those specifically approved by the Secretary.

TITLE

§ 201.1145 Eligibility of title.

(a) The lender shall determine that the title to the real property to be improved is vested in the borrower as of the date of the loan application.

(b) *Reliance on credit application.* An insured acting in good faith may, in the absence of information to the contrary, rely upon all statements of facts made by the borrower, which are called for by the borrower's credit application, in determining the eligibility of the loan.

LOAN REQUIREMENTS

§ 201.1150 Note and security form.

The lender shall present for insurance a note and security instrument or instruments, on forms approved by the Secretary for use in the jurisdiction in which the property to be improved is located.

§ 201.1155 Costs of recording security.

The insured may collect from the borrower the following expenses actually incurred by the insured in connection with the transaction: Recording fees, fees necessary to maintain the validity of the lien, documentary stamp taxes, title examination charge, and hazard insurance premiums, provided that such costs or expenses are not paid from the proceeds of the loan or included in the face amount of the note. Such costs or expenses shall not be included by the insured as a portion of a claim under the contract of insurance and, if such costs or expenses are assessed against the borrower, proper evidence thereof shall be maintained in the file.

§ 201.1160 Default provision.

The obligation shall contain a provision for acceleration of maturity, at the option of the holder, upon default in the payment of any installment.

§ 201.1165 Late charges.

The obligation may provide for a late charge not to exceed 5% per $1 of each installation more than 10 days in arrears. No late charge in excess of $50 may be made on any past due installation.

§ 201.1170 Security.

(a) *All states except Louisiana.* The loan shall be secured by a properly recorded and perfected financing statement and security agreement covering the fire safety equipment, which shall be perfected in the manner specified by the Uniform Commercial Code as adopted in each state. If prior liens on the underlying realty by separation of law attach to the fire safety equipment, the Secretary or the lender may require that the borrower obtain a subordination agreement or a disclaimer from the holder of the prior lien.

(b) *Louisiana.* The loan shall be secured by a chattel mortgage covering the fire safety equipment, which shall be filed or recorded as required by state law. If prior liens on the underlying realty attach to the collateral, the Secretary or the lender may require that a severance agreement be obtained from each person, other than the borrower, having any interest in the real estate on which the fire safety equipment is installed.

§ 201.1175 Validity and enforceability of loan.

The obligation shall bear the genuine signature of the borrower as maker, shall be valid and enforceable against the borrower or borrowers and shall be complete and regular on its face. The signatures of all parties to the obligation must be genuine. If the obligation is executed for and on behalf of a corporation or trust, the note must create a binding obligation of the principal.

The obligation shall be secured by a properly recorded and perfected financing statement and security agreement or chattel mortgage which creates a first lien against the fire safety equipment.

§ 201.1180 Lien on real estate.

As additional security, a recorded lien on the improved real estate shall be required for any loan of $25,000 or more. The lien shall be in the form of a real estate mortgage, deed of trust or other form of security instrument approved by the Commissioner.

§ 201.1185 Prepayment privilege and prepayment charge.

The security instrument shall contain a provision permitting prepayment of the loan in whole or in part upon any date a payment is due, after giving the lender 30 days' advance written notice, and it may contain a provision with the approval of the Secretary for a reasonable charge in the event of prepayment.

§ 201.1190 Refinancing.

A new obligation entered into for the purpose of liquidating a loan previously reported for insurance may be insured, if such new loan meets the requirements of this Subpart and if the term of the new loan does not exceed 25 years and 32 days from the date of the original loan. The full amount of any unearned financing charge on the original obligation shall be refunded to the borrower. The earned charge shall be calculated by the actuarial method. The borrower may be assessed a handling charge of not more than $500 in connection with the refinancing.

FORM OF CONTRACT

§ 201.1195 Contract requirements.

(a) The contract between the mortgagor and the contractor shall be a lump sum contract for a specified amount. The contract shall include only the cost of fire safety equipment, and its installation.

(b) [Reserved.]

(c) *Completion certificate.* The insured shall obtain a completion certificate on a form approved by the Secretary, signed by the borrower and by the contractor.

(d) *Use of loan proceeds.* The proceeds of a loan shall be used only to finance the purchase and installation of fire safety equipment in existing health care facilities, in accordance with the requirements of this Subpart and the purchase and installation of the equipment must be commenced in reliance upon the credit facilities afforded by Title I of the Act.

§ 201.1200 Discrimination prohibited.

Any contract or subcontract executed for the installation of equipment, or construction of improvements to the projects shall provide that there shall be no discrimination against any employee or applicant for employment because of sex, religion, race, color, or national origin.

RIGHTS AND DUTIES OF LENDER UNDER THE CONTRACT OF INSURANCE

§ 201.1205 Servicing and collection.

The insured shall service loans in accordance with the accepted practices of prudent lending institutions. The insured shall have adequate facilities for contacting the borrower in the event of default and shall otherwise exercise diligence in collecting the amount due. The insured shall remain responsible to the Secretary for proper collection efforts, even though the actual servicing and collection may be performed by an agent of such insured.

§ 201.1210 Administrative reports and examinations.

The Secretary may at any time call upon an insured for such reports as the Secretary may deem to be necessary in connection with the regulations in this Subpart. The Secretary may inspect the books or accounts of the insured as they pertain to the loans reported for insurance.

§ 201.1215 Election by lender.

Upon default, the lender may either elect to assign the loan to the Secretary in exchange for the payment of insurance benefits or may exercise its rights under the note and security instrument or instruments in lieu of making a claim for insurance benefits. If the lender elects the latter course, the Secretary shall be so notified, and insurance coverage shall be deemed terminated, at the discretion of the Secretary.

INSURANCE CHARGE REQUIREMENTS

§ 201.1220 Rate of insurance charge.

(a) *First premium.* The insured shall pay to the Secretary by check or draft an insurance premium equal to ninety one hundredths (0.90) of one percent of the net proceeds of any eligible loan reported and acknowledged for insurance. Payments shall be due within twenty-five (25) days of the Secretary's acknowledgment of the loan report.

(b) *Annual insurance premium.* The second and succeeding installments shall be paid by check or draft within twenty-five (25) days after billing by the Secretary on an annual basis.

(c) *Calculation of premiums.* Premiums payable after the first premium payment shall be equal to ninety one hundredths (0.90) of one percent of the average outstanding principal balance calculated in accordance with the amortization schedule without taking into account delinquent payments or prepayments.

§ 201.1225 Insurance charge adjustments on transfers.

Where there is a transfer of obligation between the insured lenders and the insurance charge on such obligation has already been paid, any adjustment of such charge shall be made by the lenders involved, except that any unpaid installments of the insurance charge shall be paid by the purchasing lender.

§ 201.1230 Refund or abatement of insurance charge.

An insured shall be entitled to a refund or abatement of insurance charges only in the following instances:

(a) Where the obligation has been refinanced, the unearned portion of the charge on the original obligation shall be credited to the charges on the refinanced loan.

(b) Where the obligation is prepaid in full or an insurance claim is filed, charges falling due after such prepayment or claim shall be abated.

(c) Where a loan (or portion thereof) is found to be ineligible for insurance, charges paid on the ineligible portion shall be refunded. Such refund shall be made, however, only if a claim is denied by the Secretary or the ineligibility is reported by the insured promptly upon discovery. In no event shall a charge be refunded on the basis of a loan ineligibility where the application for refund is made after the loan is paid in full.

§ 201.1235 Insurance charge to borrower.

The insurance charge paid by the insured may be passed on to the borrower, provided such charge is fully disclosed to the borrower.

§ 201.1240 Insurance reserve.

All of the provisions of § 201.12 with respect to maintenance for each insured lender of a general reserve shall apply with respect to loans reported for insurance under this subpart. The aggregate amount of loans advanced by an insured lender, for the purpose of determining its general insurance reserve, shall include loans reported for insurance under Subparts A, B, and C of this part.

LOAN REPORTS

§ 201.1245 Report of loans.

(a) *Date of reports.* A loan report on the prescribed form shall be transmitted to the Federal Housing Administration at Washington, D.C., within 31 days from the following dates:

(1) In the case of an original loan, the date of the loan or the date upon which it was purchased by the insured.

(2) In the case of a refinancing, the date of the refinancing loan.

(3) In the case of a transfer of the loan to another insured lender, the date of the transfer.

(b) *Late reports.* If the loan is current, the Secretary may in his discretion, accept a late report on a loan where the insured certifies that the obligation is not in default.

(c) *Transfer of loan between insured lenders.* All of the provisions of § 201.12 (d) governing the transfer of loans between insured lenders shall apply to loans insured under this subpart.

CLAIMS

§ 201.1250 Claims.

(a) *Claim application.* Claim for reimbursement for loss on an eligible loan shall be made on a form approved by the Secretary and executed by a duly qualified officer of the insured. The claim shall be accompanied by the insured's complete credit and collection file pertaining to the transaction. Claim shall not be filed by the insured until after default.

§ 201.1255 Maximum claim period.

Claim shall be filed no later than 9 months and 31 days after the due date of the earliest fully unpaid installment provided for in the obligation unless an extension is requested and approved by the Secretary.

§ 201.1260 Date of default.

For the purpose of determining the date of default, any payments received on an account, including payment of judgments predicated thereon, shall be applied to the earliest unpaid installment.

§ 201.1265 Amount of claim.

(a) An insured may be reimbursed for its losses on loans made in accordance with the regulations under this subpart, up to the amount of its general insurance reserve. The amount of the reimbursement is determined by following the computation steps in subparagraphs (1), (2), (3), and (4) of this paragraph as follows:

(1) 90 percent of the net unpaid amount of the loan actually made or 90 percent of the actual purchase price of the note, whichever is the lesser.

(2) 90 percent of the uncollected interest earned up to the date of default calculated according to the actuarial method, plus 90 percent of the interest computed at 7 percent per annum on the outstanding balance, computed from the date of default:

(i) To either the date of the claim application or for a period of 9 months and 31 days following such default date, whichever period of time is the lesser, or

(ii) To the date of certification of the claim for payment in a case where an otherwise eligible claim has been held in suspense by the Secretary pending a determination of the eligibility for insurance of other claims or loans, or by an investigation of the insured's loan or claim activities.

(3) Uncollected court costs, if any, including fees paid for issuing, servicing, and filing summons.

(4) Attorney's fees, if any, actually paid not exceeding $250.

(i) Actual costs and expenses in recording of assignments of security to the United States.

(b) *Assignment of documents.* The note and any security held or judgment taken must be assigned in its entirety; if a claim has been filed in bankruptcy, insolvency, or probate proceedings, such claims shall likewise be assigned to the United States of America.

(c) *Form of assignment.* The following form of assignment properly dated shall be used in assigning a note, financing statement, security agreement, judgment, real estate mortgage, deed of trust, conditional sales contract, chattel mortgage, mechanic's lien, or any other security device in event of claim:

All right, title, and interest of the undersigned is hereby assigned (without warranty, except that the note qualifies for insurance) to the United States of America.

_____
Financial Institution

By_____

Title_____

Date_____

Provided, That if this form is not valid or generally acceptable in the jurisdiction involved, a form which is valid and generally acceptable shall be used.

§ 201.1270 Flood insurance.

(a) Flood insurance coverage is required as a condition of obtaining or refinancing a loan when the building to be improved is in an area that has been identified by the Secretary as an area having special flood hazards and flood insurance for such area has been made available under the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93–234) and implementing regulations, Title 24, Chapter X, Subchapter B. The amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

(b) On or after July 1, 1975, or after one year following the date of official notification to the chief executive officer of the community of identification of special flood hazards, whichever is later, no loan shall be made or refinanced if the building is located in an area that has been identified by the Secretary as an area having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program, and such insurance is obtained by the borrower. The amount of flood insurance required need not exceed the principal balance of the loan and need not be required beyond the term of the loan.

INCONTESTABILITY

§ 201.1275 Incontestability of claim payment.

Any payment for loss made to an approved financial institution shall be final and incontestable after two years from the date the claim was certified for payment in the absence of fraud or misrepresentation on the part of such institution, unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two-year period.

AMENDMENTS

§ 201.1280 Amendment and effect.

The regulation in this part may be amended by the Secretary at any time, but such amendment shall not adversely affect the insurance privileges of an insured with respect to any loan previously made or in the process of being made. Unless otherwise provided, an amendment shall be applicable to any loan or the refinancing of any loan, when the loan is made pursuant to an application dated on or after the effective date of such amendment.

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A–107.

Issued at Washington, D.C., September 22, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc.76–28297 Filed 9–28–76;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART VII:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS

Areawide Programs; Interim Regulations

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R–76–292]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Areawide Programs; Interim Rule

On February 27, 1976, the Department of Housing and Urban Development published in the FEDERAL REGISTER (41 FR 8612) regulations setting forth application requirements and criteria for discretionary grants under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.). These appear as 24 CFR Part 570, Subpart E.

Notice is hereby given that HUD is issuing § 570.404 of Subpart E to incorporate the policies and procedures to be utilized in reviewing and selecting applications for the award of grants for areawide programs authorized by Section 107(a)(2) of the Housing and Community Development Act of 1974. Section 570.404 has previously been reserved.

Section 107(a)(2) authorizes grants to States and units of general local government which join in carrying out housing and community development programs that are areawide in scope. Grants will be made for eligible community development block grant activities to be carried out by State governments and units of general local government for the purpose of creating stronger State and areawide housing and community development planning and delivery systems.

First, grants will be made available to assist in the implementation of Areawide Housing Opportunity Plans which receive supplemental housing allocations under Title II of the Housing and Community Development Act of 1974 (42 U.S.C. 1439).

The Department of Housing and Urban Development published in the FEDERAL REGISTER regulations which provide for supplemental allocations of contract authority for the housing assistance programs identified in § 891.101(a) for use in jurisdictions covered by a HAP and participating in an Areawide Housing Opportunity Plan (Plan). The Plan, developed by an Areawide Planning Organization, shall provide for the promotion of a greater choice of housing opportunities for lower-income households outside of areas containing undue concentrations of lower-income households. Those regulations were published at 41 FR 25982 on June 23, 1976 (24 CFR Part 891).

Community development block grants will be made to Participating Jurisdictions as defined in § 891.501(a)(1), which have received a supplemental allocation of housing assistance pursuant to 24 CFR Part 891, for carrying out eligible activities that aid or further the implementation of such Plans. Primary consideration will be given to those activities which are recommended for priority consideration by the appropriate Areawide Planning Organization.

Second, community development block grants will be made available for eligible activities that are part of a program for the coordinated delivery of combined resources and programs to lower-income persons and families living in nonmetropolitan rural areas, with a heavy reliance on State community development and housing agencies. The Department of Housing and Urban Development has been cooperating with the U.S. Department of Agriculture agencies, including the Farmers Home Administration, and the Extension Service, to develop ways to coordinate Federal programs with State and local agencies to support community development activities and provide housing assistance to meet the needs of lower-income families living in substandard housing in nonmetropolitan rural areas. Accordingly, grants will be made to States, selected by HUD and USDA, that will utilize the technical assistance, processing and financing capacities of State agencies to implement community development and housing programs administered by HUD, USDA, and other Federal departments to improve the quality of life in nonmetropolitan rural areas.

Third, the Secretary reserves the right to make areawide grants for other purposes, consistent with the general provisions of the Act.

Section 570.404 is being published as an interim regulation effective on the date of publication. This is necessary in order to make discretionary grants for areawide programs out of appropriations for fiscal year 1976 in a timely manner.

Interested persons are invited to participate in the making of the final rule by submitting written comments, views or suggestions. All such materials should refer to the Docket Number and should be filed with the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

All comments received on or before October 29, 1976, will be considered before adoption of a final rule. Copies of all comments will be available for public inspection at the above address during regular business hours both before and after the close of the comment period.

In connection with the environmental review of these interim regulations, a Finding of Inapplicability has been made under HUD Handbook 1390.1, 38 FR 19182. A copy of the Finding is available for inspection in the Office of the Rules Docket Clerk at the above address.

It is hereby certified that the economic and inflation impacts of these interim regulations have been carefully evaluated in accordance with OMB Circular No. A–107.

In consideration of the foregoing, a new § 570.404 is hereby added to 24 CFR Part 570, Subpart E to read as follows:

§ 570.404 Areawide programs.

(a) *General.* This section covers grants made to States and units of general local government which join in carrying out housing and community development programs that are areawide in scope. Subject to a reservation in the Secretary to make areawide grants for other purposes consistent with the Act, grants will be made for two basic purposes: First, grants will be made, as described in paragraph (b) of this section, in conjunction with supplemental allocations of lower-income housing assistance based upon Areawide Housing Opportunity Plans described in 24 CFR Part 891, Subpart E and published in 41 FR 25982 on June 23, 1976. Second, grants will be made, as described in paragraph (c) of this section, to States which are carrying out their housing and community development activities in conjunction with HUD and the U.S. Department of Agriculture (USDA).

(b) *Grants in support of Areawide Housing Opportunity Plans*—(1) *Eligible applicants.* Eligible applicants are only those units of general local government which are Participating Jurisdictions, as defined in 24 CFR 891.501(a)(1) (41 FR 25983, June 23, 1976), in Areawide Housing Opportunity Plans and which have received a supplemental allocation of housing assistance pursuant to 24 CFR Part 891.

(2) *Use of grant funds.* Grants will be made for eligible activities under the community development block grant program which will aid or further the implementation of Areawide Housing Opportunity Plans, in accordance with recommendations made by the Areawide Planning Organization, as defined in 24 CFR 891.501(a)(1).

(3) *Application requirements.* An application will consist of the following items:

(i) A Community Development Program as described in § 570.303(b);

(ii) A housing assistance plan as described in § 570.303(c), or if there is an existing HUD approved Housing Assistance Plan, a reference thereto;

(iii) A community development budget as described in § 570.303(d); and

(iv) The assurances described in § 570.303(e), except for (e)(4).

The Secretary shall announce through a notice in the FEDERAL REGISTER, the amount of funds to be made available during any fiscal year, any additional or special criteria which may be established for grants for areawide programs, and the closing date and address for submission of applications.

(4) *A–95.* OMB Circular No. A–95 notification and review procedures shall apply for purposes of these demonstration projects. The total notification and review period for State and areawide clearinghouses will consist of 45 days.

(c) *Grants in nonmetropolitan rural areas.* HUD will make grants to States for eligible community development block grant activities which will further the coordinated delivery of the combined resources and programs of HUD, the Department of Agriculture and other Federal agencies, to lower-income persons and families living in nonmetropolitan

rural areas, with a heavy reliance on State community development and housing agencies.

(1) *Eligible applicants.* Only States are eligible applicants under this paragraph. As provided in § 570.500, the governor of a State may designate one or more public agencies to undertake housing and community development activities.

(2) *Basic requirements.* The eligibility requirements for funding under this paragraph are:

(i) The State shall have established a State housing or other agency (or a combination of State agencies) which is authorized to finance, insure, or otherwise implement housing projects without HUD mortgage insurance; and

(ii) The State or the State agency is authorized to process Section 8 projects.

(3) *Criteria for selection.* Grants will be made for activities eligible under the community development block grant program. In selecting among applicants, priority will be given to those States which:

(i) Have demonstrated experience in providing housing assistance to lower-income persons and families in nonmetropolitan rural areas;

(ii) Have a general plan and capability for contacting and assisting lower-income persons and families living in nonmetropolitan rural areas who are not being adequately assisted; and

(iii) Have developed a plan for coordinating the delivery of housing assistance for lower-income families living in substandard housing, with the provision of public facilities and/or supportive social services on an areawide intergovernmental basis.

(4) *Application requirements.*—(i) *Letter of Intent.* States meeting the requirements of paragraph (c)(2) of this section may submit a letter of intent which:

(A) Describes how the State meets the basic requirements in paragraph (c)(2) of this section;

(B) Describes how the State meets the criteria for selection in paragraph (c)(3) of this section; and

(C) Describes the area or jurisdictions to be served, and identifies the units of general local government with which it proposes to enter into cooperation agreements for carrying out community development and housing activities. The Secretary shall announce through a notice in the FEDERAL REGISTER, the amount of funds to be made available during any fiscal year, any additional or special criteria which may be established for grants for areawide programs, and the closing date for submission of letters of intent.

(ii) *Full application.* Based upon a joint review by HUD and the Department of Agriculture of the letter of intent, a limited number of full applications will be invited. A full application shall consist of the following:

(A) A description of community development needs and objectives to be served in the area or jurisdictions in which activities are to be carried out;

(B) A Community Development Program as described in § 570.303(b);

(C) A plan for providing housing assistance in the area to be served;

(D) A community development budget as described in § 570.303(d);

(E) The assurances described in § 570.303(e), except for (e)(4); and

(F) Evidence of execution of cooperation agreements with those units of general local government in which community development and housing activities will be carried out. Application submission deadline will be established at the time HUD invites full applications. The Secretary may, in the letter of invitation, establish additional or specific submission requirements. Full applications will be reviewed jointly by HUD and the Department of Agriculture. Due to the limited resources and the demonstration nature of grants for areawide programs, no more than four States will be funded.

(5) *A–95.* In accordance with OMB Circular No. A–95, a copy of the letter of intent shall be sent to the appropriate State and areawide clearinghouses at least thirty days prior to being sent to HUD. A copy of the full application shall also be sent to the appropriate State and areawide clearinghouse at least thirty days prior to being sent to HUD.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Effective date: This amendment shall be effective on September 29, 1976.

DAVID O. MEEKER, Jr.,
FAIA, AIP, Assistant Secretary for Community Planning and Development.

[FR Doc.76–28298 Filed 9–28–76;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART VIII:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

DRUGS FOR HUMAN USE

Estrogen and Other Drugs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 310]

[Doc. No. 76N-0384]

ESTROGENS FOR GENERAL USE

Requirement for Labeling Directed to the Patient

The Food and Drug Administration (FDA) is proposing new requirements for patient labeling for estrogens for general use. Interested persons have until November 29, 1976 to submit comments.

This action is being taken on the basis of recent reports of an increased risk of endometrial cancer (involving the mucous membrane that lines the civity of the uterus) associated with the long-term use of estrogens in postmenopausal women. The proposed requirements describe the kinds of statements that must be included in patient labeling for estrogens and the manner in which such labeling is to be made available to the patient. These requirements do not apply to estrogen-progestagen oral contraceptives and oral diethylstilbestrol (DES) products intended for postcoital contraception, which are required to be labeled in accordance with regulations applicable specifically to those drugs (21 CFR 310.501).

Recent papers by Ziel and Finkle, by Mack et al., and by Smith et al. (Ziel, H. K. and W. D. Finkle, "Increased risk of endometrial carcinoma among users of conjugated estrogens," New England Journal of Medicine, 293:1167–1170, 1975; Smith, D. C., R. Prentice, D. J. Thompson, and W. L. Hermann, "Association of exogenous estrogen and endometrial carcinoma," New England Journal of Medicine 293:1164–1167, 1975; Mack, T. M., M. C. Pike, B. E. Henderson, R. I. Pfeffer, V. R. Gerkins, M. Arthur, and S. E. Brown, "Estrogens and endometrial cancer in a retirement community," New England Journal of Medicine, 294:1262–1267, 1976) have reported an increased risk of endometrial cancer in women treated with estrogens. These papers and other available evidence were reviewed by the FDA Obstetrics and Gynecology Advisory Committee at an open meeting held on December 16, 1975 on the subject of estrogens and endometrial cancer. The advisory committee concluded that there appears to be an increased risk of endometrial cancer associated with the long-term use of estrogens in postmenopausal women. The Committee recommended that labeling be revised to reflect this risk of endometrial cancer and that additional studies be considered. It also recommended that labeling information for the patient be developed. A copy of the minutes of that meeting has been placed on file in the office of the Hearing Clerk, Food and Drug Administration (address below).

The Commissioner of Food and Drugs concurs with the recommendations of the Obstetrics and Gynecology Advisory Committee and is proposing to require patient labeling for these drugs. Elsewhere in this issue of the FEDERAL REGISTER, the Director of the Bureau of Drugs is issuing a drug efficacy study implementation (DESI) notice specifying new physician labeling and a text for patient labeling for estrogen drug products.

The revised physician labeling defines more narrowly the menopausal syndrome and recommends that in the menopause, estrogens be used only for treating patients with moderate to severe vasomotor symptoms. The warnings section of the labeling is revised to contain information concerning the reports linking the use of estrogens postmenopausally to the risk of endometrial cancer. The physician labeling further recommends that, if estrogens are used, they should be administered in a way most likely to minimize the risk of endometrial cancer: The lowest effective dose should be used at all times; the drug should be administered cyclically; and the drug should be either discontinued or reduced in dosage at regular intervals to assess whether it is still needed.

In addition to the reports on increased risk of endometrial cancer in women treated with estrogens, reports during the last several years have indicated that the use of estrogens during early pregnancy may seriously damage the offspring. The reports have shown that females exposed in utero to diethylstilbestrol (DES), a nonsteroidal estrogen, have increased risk of vaginal cancer when they reach puberty (e.g., Herbst, A. L., H. Ulfelder, and D. C. Poskanzer, "Adenocarcinoma of the Vagina," New England Journal of Medicine, 284:878–881, 1971; Greenwald, P., J. Barlow, P. Nasca, and W. Burnett, "Vaginal Cancer After Maternal Treatment with Synthetic Estrogens," New England Journal of Medicine, 285:390–392, 1971; Nora, J. and A. Nora, "Birth Defects and Oral Contraceptives," Lancet, 1:941–942, 1973; Janerich, D. T., J. M. Piper, and D. M. Glebatis, "Oral Contraceptives and Congenital Limb-Reduction Defects," New England Journal of Medicine, 291:697–800, 1974). Although similar data are not available for estrogens other than diethylstilbestrol and its congeners, it cannot be presumed that they will not induce the same changes. Several of the reports cited above have also suggested an association between intrauterine exposure to estrogens and congenital anomalies, including congenital heart defects and limb reduction defects. After review of all available data, the Director of the Bureau of Drugs has concluded that the use of estrogens during pregnancy should be contraindicated. The physician labeling thus includes this contraindication. A boxed warning describes the hazards of estrogens used in pregnancy and further notes that there is evidence that estrogens are not effective for any use in pregnancy.

The Commissioner is of the opinion that the new findings linking postmenopausal estrogen use to endometrial cancer, the reports of an association between intrauterine exposure to estrogens and congenital anomalies, and the finding of an increased risk of vaginal cancer in adolescent daughters exposed in utero to an estrogen (DES) must not only be carefully considered by physicians who prescribe these drugs, but also by patients who take them. He is of the opinion that the advantages and risks associated with the use of these products are of a type that can and should be assessed by patients.

Accordingly, the Commissioner is proposing to establish new § 310.515 (21 CFR 310.515) that would require certain information in the form of patient labeling concerning the use of estrogens to be given to the patient when the drug is dispensed. The patient labeling would be provided by the manufacturer, packer, or distributor as a separate, printed leaflet, in typeface no smaller than that provided by 9-point not condensed type, and independent of any additional printed materials. A sufficient number of patient-labeling leaflets would be required to be provided with any bulk shipment of estrogen drug products to assure that the leaflet can be included with each package dispensed to the patient. The dispensor would then be responsible for providing the patient with the labeling leaflet. Failure to do so would result in the misbranding of the drug product by the dispensor.

The patient labeling for estrogen drug products is based on the approved physician labeling for these drug products and would apply (1) to all estrogen drug products, including products containing estrogens in fixed combinations with other drugs, e.g., estrogen-tranquilizer combinations, that are the subject of new drug applications approved either before or after the Drug Amendments of 1962, whether or not final determinations about effectiveness have been made in the Drug Efficacy Study, and (2) to any identical, related, or similar drug product whether or not it is the subject of an approved new drug application. However, this labeling would not apply to estrogen-progestagen oral contraceptives and oral diethylstilbestrol (DES) products intended for postcoital contraception, which are required to be labeled in accordance with regulations specifically applicable to those drugs (21 CFR 310.501). A list of drug entities that, along with their salts and esters, are examples of estrogens to which this labeling applies, is included in the DESI notice (Docket No. 76N-0381) published elsewhere in this issue of the FEDERAL REGISTER.

The Commissioner advises that he proposes to make § 310.515 effective 60 days after its publication as a final order in the FEDERAL REGISTER. Manufacturers and suppliers are advised, and the proposed rule provides, that the language in the accompanying DESI notice (Docket No. 76N-0381) will be considered by the Commissioner to meet the requirements of the final order establishing § 310.515 for 60 days after its effective date, i.e., 120 days after publication, notwithstanding that changes in the wording of the patient labeling may be made in the final order establishing § 310.515, or in an accompanying DESI notice, as a re-

sult of comments received from the public, or as a result of new information. Thus, manufacturers may put into use immediately, without advance approval by FDA, the patient labeling in the accompanying DESI notice, and continue to use that labeling for 60 days after the effective date, i.e., 120 days after publication of the final order establishing § 310.515. Moreover, it is likely, though not certain, that the final order establishing § 310.515 will not necessitate further changes in labeling that conforms to the current DESI notice. The Commissioner encourages manufacturers to provide this patient labeling in this fashion. He considers it in the interest of the public health that this needed information be provided to patients in as timely a manner as possible. A manufacturer or supplier who defers preparing patient labeling until the final order is published will have 60 days from the day of publication to implement the labeling requirement.

Supplements to approved new drug applications that provide for patient labeling may be submitted under the provisions of § 314.8(d) (21 CFR 314.8(d)). The changes that are provided for by these supplements will not have a substantial effect on the quality of the human environment and therefore they need not be accompanied by environmental impact analysis reports.

On or after the effective date of the final regulation, no person would be permitted to introduce or deliver for introduction into interstate commerce, or to hold for sale after shipment in interstate commerce, any estrogen drug product to which the regulation applies, unless the labeling of that product complies with the requirements set forth in the regulation. However, the Commissioner would consider an estrogen drug product in the possession of a wholesaler or retailer before the effective date to comply with the order if adequate numbers of copies of the patient labeling are furnished to the wholesaler or retailer to permit any retail purchaser after the effective date to obtain such labeling with the product.

The Commissioner has carefully considered the inflation impact of the proposed regulation as required by EO 11821, OMB Circular A–107, and Guidelines issued by the Department of Health, Education, and Welfare, and no major inflation impact has been found. A copy of the FDA inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration (address below).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 701(a), 52 Stat. 1050–1053 as amended, 1055 (21 U.S.C. 352, 355, 371(a))) 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 to amend Part 310 by adding new § 310.515 to read as follows:

§ 310.515 Estrogens; labeling directed to the patient.

(a) The Commissioner of Food and Drugs concludes that the safe and effective use of drug products containing estrogens requires that patients be fully informed of the benefits and risks involved in the use of these drugs. Accordingly, except as provided in paragraph (c) of this section, each estrogen drug product, including products containing estrogens in fixed combination with other drugs, e.g., estrogen-tranquilizer combinations, that is the subject of a new drug application approved either before or after the Drug Amendments of 1962 and any identical, related, or similar drug product, whether or not it is the subject of an approved new drug application, shall be dispensed to patients with labeling in lay language containing information concerning effectiveness, contraindications, warnings, precautions, and adverse reactions. The patient labeling shall be provided as a separate printed leaflet in typeface and no smaller than that provided by 9-point not condensed type and independent of any additional materials.

(b) The patient labeling shall specifically include the following:

(1) Name of the drug.

(2) Name and place of business of the manufacturer, packer, or distributor.

(3) A statement regarding the proper use of estrogens, particularly short-term use in moderate to severe vasomotor symptoms of the menopause and prevention of breast engorgement. It is to be stated that estrogens are not indicated for certain conditions, i.e., nervousness, preservation of supple skin, or maintenance of a youthful feeling. The limited usefulness in preventing breast engorgement is also to be noted.

(4) A warning regarding the most serious dangers of estrogens and the relative risk in users versus nonusers, where known, including:

(i) Cancer of the uterus. The importance of minimizing dose and duration of use is to be stressed, as is the importance of using estrogens only when necessary.

(ii) Other possible cancer. The importance of annual examinations is to be stressed. Special attention to women with breast nodules, abnormal mammograms, or a family history of breast cancer is to be mentioned.

(iii) Gall bladder disease.

(iv) Abnormal blood clotting.

(v) Damage to exposed fetus.

(5) A statement of contraindications.

(6) A discussion of other side effects of estrogens, including oral contraceptives, such as nausea and vomiting, breast tenderness, growth of fibroids, benign liver tumors, jaundice, mental depression, fluid retention, and darkening of the skin.

(7) A discussion of the danger sign of which the patient must be aware, including abnormal vaginal bleeding, symptoms suggesting thrombophlebitis, pulmonary embolus, stroke or heart attack, breast lumps, jaundice, and depression.

(8) The date of issuance or date of the latest revision of the patient labeling prominently placed in the top right hand corner of the first page of the text of the labeling.

(c) This section does not apply to estrogen-progestagen oral contraceptives and oral diethylstilbestrol (DES) products intended for postcoital contraception, which shall be labeled according to the requirements of § 310.501.

(d) (1) Patient labeling for each estrogen drug product shall be provided in or with each package intended to be dispensed to the patient.

(2) In the case of estrogen drug products in bulk packages intended for multiple dispensing, each bulk package shall include a sufficient number of patient labeling pieces to assure that one can be included with each package dispensed to every patient. Each bulk package shall be labeled with instructions to the dispensor to include one patient labeling piece with each package dispensed to the patient.

(3) Any estrogen drug product, except as noted in paragraph (c) of this section, that is not labeled as required by this section and that is either introduced or delivered for introduction into interstate commerce, or held for sale after shipment in interstate commerce is misbranded pursuant to section 502 of the act. However, an estrogen drug product in the possession of a wholesaler or retailer before the effective date of this section is not misbranded if adequate numbers of copies of the patient labeling are furnished to the wholesaler or retailer to permit any retail purchaser after the effective date to obtain such labeling with the product.

(e) The Food and Drug Administration has available patient labeling for estrogens that includes information responsive to all items specified in paragraph (b) of this section. The labeling has been published in the FEDERAL REGISTER as part of a DESI notice, and updated versions will continue to be published as guides as changes occur. Any person may rely on this labeling as complying with paragraph (b) after the effective date of this section. However, for a period of 60 days after the effective date of this section, any person may also rely as complying with paragraph (b) the labeling in the DESI notice (Docket Number 76N–0381) published in the FEDERAL REGISTER of September 29, 1976 at page 43117.

(f) Holders of new drug applications for estrogen drug products that are subject to this section must submit supplements under § 314.8(d) of this chapter to provide for the labeling required by paragraph (a) of this section. The labeling may be put into use without advance approval by the Food and Drug Administration.

Interested persons may, on or before November 29, 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: September 22, 1976.

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

[FR Doc.76–28433 Filed 9–28–76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 76N-0261; DESI 2238]

CERTAIN PREPARATIONS FOR VAGINAL USE

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

In a notice (DESI 2238; Docket No. FDC-D-500 (now Docket No. 76N-0261)) published in the FEDERAL REGISTER, July 27, 1972 (37 FR 15028), the Food and Drug Administration announced its conclusions that the drug products described below are effective in the treatment of various vaginal disorders. The drug products were also classified as less-than-effective (probably effective, possibly effective, and lacking substantial evidence of effectiveness) for certain other indications. The notice provided an opportunity for hearing for the indications concluded at that time to lack substantial evidence of effectiveness. No person submitted data in support of the probably or possibly effective indications, and they are now reclassified as lacking substantial evidence of effectiveness. This notice offers an opportunity for hearing concerning those indications and states the conditions for marketing the drugs for the indications for which they continue to be regarded as effective. Persons who wish to request a hearing may do so on or before October 29, 1976.

The notice that follows does not pertain to the indications stated in the July 27, 1972 notice to lack substantial evidence of effectiveness. No person requested a hearing concerning them, and they are no longer allowable in labeling. Any such product labeled for those indications is subject to regulatory action.

Final conclusions concerning the effectiveness of the drug product Gentia-Jel, containing gentian violet (NDA 5-850), were stated in the July 27, 1972 notice. The conclusions described in this notice do not pertain to that drug product.

NDA 9-796; Cortril Vaginal Tablets containing hydrocortisone; Pfizer Laboratories, Division Pfizer, Inc., 235 E. 42d St., New York, NY 10017.

NDA 2-238; Negatan Solution containing negatol; Eli Lilly & Co., Box 618, Indianapolis, IN 46206.

NDA 5-900; Premarin Cream containing conjugated estrogens; Ayerst Laboratories, Division of American Home Products Corp., 685 Third Ave., New York, NY 10017.

NDA 4-040; Diethylstilbestrol Vaginal Suppositories; Eli Lilly & Co.

NDA 6-110; Dienestrol Cream; Ortho Pharmaceutical Corp., Rt. 202, Raritan, NJ 08869.

NDA 10-189; Sterisil Vaginal Gel containing hexetidine; Warner-Chilcott Laboratories, Division Warner-Lambert Co., 201 Tabor Rd., Box W, Morris Plains, NJ 07950.

Other vaginal products containing sulfa included in the July 27, 1972 notice are not affected by this notice.

Although the following two products were not included in the July 27, 1972 notice, the notice that follows is applicable to them.

That part of NDA 4-073 pertaining to Stilbestrol Suppositories containing diethylstilbestrol; The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49002.

NDA 4-447; Stilbestrol Suppositories containing diethylstilbestrol; Cooper Laboratories, 300 Fairfield Rd., Wayne, NJ 07470.

In a notice published in the FEDERAL REGISTER of October 14, 1971 (36 FR 19995), the approval of NDA 10-189 for Sterisil Vaginal Gel was withdrawn on the ground of failure to submit required reports under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)). At the time that notice was published, no conclusions concerning the indications had been reached. Those conclusions have now been reached, and the purpose of including Sterisil (hexetidine) Vaginal Gel (NDA 10-189) in this notice is to inform all interested persons of such conclusions and offer them the opportunity to request a hearing concerning all issues relating to its legal status.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufacturers or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD-310), 5600 Fishers Lane, Rockville, MD 20852.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drugs are effective for the indications listed in the labeling conditions below. The effective indications for the estrogen products have been relabeling for estrogens published elsewhere in the FEDERAL REGISTER. (See discussion in B.2.c.). The drugs now lack substantial evidence of effectiveness for the indications evaluated as probably or possibly effective in the July 27, 1972 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in cream, gel, tablet, solution, suppository, or suspension form, as indicated in the listing above, suitable for vaginal and/or topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indications are as follows:

HYDROCORTISONE

For treatment of chemical or allergic vulvovaginitis.

NEGATOL

For use as a styptic (astringent and hemostatic).

CONJUGATED ESTROGENS, DIETHYLSTILBESTROL, OR DIENESTROL

For the treatment of atrophic vaginitis and kraurosis vulvae.

HEXETIDINE

For treatment of *Haemophilus vaginalis* vaginitis.

c. The Food and Drug Administration has undertaken a comprehensive review of the estrogen class of drugs, particularly their indications and certain adverse effects which recent papers in the scientific literature have reported to be associated with the use of estrogens. As a result of this review, the Food and Drug Administration concludes that there is a need (1) for extensive revision of the physician labeling for this class of drugs and (2) for patient package labeling. Such labeling has been developed for the use of manufacturers, repackers, relabelers, and distributors of estrogens for general use and is published elsewhere in this issue of the FEDERAL REGISTER. It will be updated as necessary.

Therefore, published elsewhere in this issue of the FEDERAL REGISTER are the following: (1) A notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" setting forth physician labeling text and proposed patient labeling for estrogens. (Docket No. 76N-0381.) (2) A notice of proposed rule making entitled "Estrogens for General Use; Proposed Requirement for Labeling Directed to the Patient" to establish a requirement for patient package labeling for drug products containing estrogens. (Docket No. 76N-0384.)

Because of the wide use of these drugs and thus the general interest of not only manufactuers and physicians but of consumers also, the impact the new labeling may have on future uses of estrogens, and the new information on which the labeling changes are based, the

Food and Drug Administration has determined that opportunity should be offered to all interested persons to comment on the text of both the physician labeling and the proposed patient labeling. Although the physician labeling is to be put into use as set forth in item 3 below, comments will be reviewed for appropriate change.

Upon review of the comments and promulgation of a final regulation requiring patient package labeling, a followup DESI notice, applying to DESI drugs and all other estrogens not specifically excepted, will be published in the FEDERAL REGISTER giving the text of current physician labeling, if it is revised on the basis of comments, and the text of current patient labeling. In the meantime, use of the physician labeling set forth in Docket No. 76N-0381 is required and use of the patient labeling set forth there is encouraged.

3. *Marketing status of estrogen products.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that on or before November 29, 1976, the holder of the application submits the following if he has not previously done so:

(i) A supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1 (c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

(ii) A supplement to provide for revised physician labeling in accord with the indications stated above in item B.2.b of this notice and substantially the same in content as the physician labeling set forth in the notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" published elsewhere in this issue of the FEDERAL REGISTER (Docket No. 76N-0381).

b. Because of the importance of the revised labeling information and the need for its prompt dissemination, the Food and Drug Administration will regard as misbranded and subject to regulatory action, any estrogen product that is covered by this notice and shipped in interstate commerce by a manufacturer, repacker, relabeler, or distributor after November 29, 1976, without labeling which is substantially the same in content as the physician labeling set forth in the notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" (Docket No. 76N-0381), published elsewhere in this issue of the FEDERAL REGISTER, and in accord with the indications set forth in item B.2.b. of this notice. Such labeling may be put into use in advance of approval or submission of a supplement to a new drug application. If a hearing has been requested on the question of effectiveness of a specific product (see Item C below), that product will not be regarded as misbranded if its labeling is otherwise revised as stated above but retains the indication on which the hearing is requested.

c. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such product. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

4. *Marketing status of products other than estrogens.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before November 29, 1976, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1 (c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such product. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), and 21 CFR 300.50, demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) (or, if indicated above, those parts of the application(s) providing for the drug product(s) listed above) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In adddition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before October 29, 1976, a written notice of appearance and request for hearing, and (2) on or before November 29, 1976, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved

NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given below) during working hours, Monday through Friday.

Communications forwarded in response to this notice should be identified with the reference number DESI 2238, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Supplements (identify with NDA number):

Hydrocortisone products—Division of Oncology and Radiopharmaceutical Drug Products, (HFD–150), Rm. 17B–45, Bureau of Drugs.

Negatol or hexetidine products—Division of Anti-Infective Drug Products, (HFD–140), Rm. 12B–45, Bureau of Drugs.

Estrogen products—Division of Metabolism and Endocrine Drug Products, (HFD–130), Rm. 14B–04, Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC–20), Rm. 4–65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Documents Center (HFC–18), Rm. 4–62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–101), Bureau of Drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: September 17, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.76–28434 Filed 9–28–76;8:45 am]

[Docket No. 76N–0377; DESI 7661]

CERTAIN DRUGS CONTAINING FLUOXYMESTERONE AND ETHINYL ESTRADIOL; DIETHYLSTILBESTROL AND METHYLTESTOSTERONE; CHLOROTRIANISENE AND METHYLTESTOSTERONE; OR TESTOSTERONE ENANTHATE AND ESTRADIOL VALERATE

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

The Food and Drug Administration is reclassifying the less-than-effective indications for certain estrogen-androgen combination drugs, offering an opportunity for a hearing on the reclassification, and announcing the conditions under which the drugs may be marketed for the indications for which they continue to be regarded as effective. Persons who wish to request a hearing may do so on or before October 29, 1976.

In a notice (DESI 7661; Docket No. FDC–D–313 (now Docket No. 76N–0377)) published in the FEDERAL REGISTER of September 8, 1972 (37 FR 18225), the Food and Drug Administration announced its conclusions that the drug products described below are: (1) effective for the prevention of postpartum breast engorgement and for the menopausal syndrome in those patients not improved by estrogen alone; (2) probably effective for the treatment of postmenopausal and senile osteoporosis when used in conjunction with other important therapeutic measures such as diet, calcium physiotherapy, and good general health promoting measures; (3) possibly effective for use in osteoporosis in certain patients following long-term adrenocortical therapy; prevention of postpartum breast manifestations of lactation; protein depletion and chronic debility; tissue atrophy in geriatric patients; depletion of protein and osseous tissues during corticosteroid therapy, spinal paraplegia, and delayed fracture union; and for dysmenorrhea; and (4) lacking substantial evidence of effective for male climacterium. The notice also offered an opportunity for a hearing concerning the indication concluded at that time to lack substantial evidence of effectiveness. No person has submitted any data in support of the probably and possibly effective indications, and those indications are now reclassified as lacking substantial evidence of effectiveness.

The notice that follows does not pertain to the indication stated in the notice of September 8, 1972, to lack substantial evidence of effectiveness. No person requested a hearing concerning it, and it is no longer allowable in labeling. Any such product labeled for that indication is subject to regulatory action.

1. NDA 11–267; Halodrin Tablets containing fluoxymesterone and ethinyl estradiol; The Upjohn Co., 7171 Portage Rd., Kalamazo, MI 49002.

2. NDA 8–099; Tylosterone Injecton; and

3. NDA 7–661; Tylosterone Tablets each containing diethylstilbestrol and methyltestosterone; Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 46206.

4. NDA 10–597; Tace with Androgen Capsules containing chlorotrianisene and methyltestosterone; Merrell-National Laboratories Division of Richardson-Merrell, Inc., P.O. Box 15260, Cincinnati, OH 45215.

5. NDA 9–545; Deladumone Injection and Deladumone OB Injection each containing testosterone enanthate and estradiol valerate; Squibb Pharmaceutical Co., Division of E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufacturers or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD–310), 5600 Fishers Lane, Rockville, MD 20852.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drugs are effective for the indications listed in the labeling conditions below. These indications have been reworded to coincide with the physician labeling for estrogens for general use published elsewhere in this issue of the FEDERAL REGISTER. (See discussion in B.2.c.) The drugs now lack substantial evidence of effectiveness for the indications evaluated as probably and possibly effective in the September 8, 1972 notice.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Testosterone enanthate with estradiol valerate is in sterile solution form suitable for parenteral administration. Methyltestosterone with

diethylstilbestrol is in sterile solution form suitable for parenteral administration or in appropriate dosage form for oral administration. The other drugs are in a dosage form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drugs are labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

Postpartum breast engorgement. Although estrogens have been widely used for the prevention of postpartum breast engorgement, controlled studies have demonstrated that the incidence of significant painful engorgement in patients not receiving such hormonal therapy is low and usually responsive to appropriate analgesic or other supportive therapy. Consequently, the benefit to be derived from estrogen therapy for this indication must be carefully weighed against the potential increased risk of puerperal thromboembolism associated with the use of large doses of estrogens.

Moderate to severe *vasomotor* symptoms associated with the menopause in those patients not improved by estrogen alone. (There is no evidence that estrogens are effective for nervous symptoms or depression which might occur during menopause, and they should not be used to treat these conditions.)

The dosages for any of these indications which are to be used in labeling must be supported by clinical data if the indication was not included in the labeling which the Academy reviewed for that particular drug.

c. The Food and Drug Administration has undertaken a comprehensive review of the estrogen class of drugs, particularly their indications and certain adverse effects which recent papers in the scientific literature have reported to be associated with the use of estrogens. As a result of this review, the Food and Drug Administration concludes that there is a need (1) for extensive revision of the physician labeling for this class of drugs and (2) for patient package labeling. Such labeling has been developed for the use of manufacturers, repackers, relabelers, and distributors of estrogens for general use and is published elsewhere in this issue of the FEDERAL REGISTER. It will be updated as necessary.

Therefore, published elsewhere in this issue of the FEDERAL REGISTER are the following: (1) A notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" setting forth physician labeling text and proposed patient labeling for estrogens. (Docket No. 76N-0381.) (2) A notice of proposed rule making entitled "Estrogens for General Use; Proposed Requirement for Labeling Directed to the Patient" to establish a requirement for patient package labeling for drug products containing estrogens. (Docket No. 76N-0384.)

Because of the wide use of these drugs and thus the general interest of not only manufacturers and physicians but of consumers also, the impact the new labeling may have on future uses of estrogens, and the new information on which the labeling changes are based, the Food and Drug Administration has determined that opportunity should be offered to all interested persons to comment on the text of both the physician labeling and the proposed patient labeling. Although the physician labeling is to be put into use as set forth in item 3 below, comments will be reviewed for appropriate change.

Upon review of the comments and promulgation of a final regulation requiring patient package labeling, a followup DESI notice, applying to DESI drugs and all other estrogens not specifically excepted, will be published in the FEDERAL REGISTER giving the text of current physician labeling, if it is revised on the basis of comments, and the text of current patient labeling. In the meantime, use of the physician labeling set forth in Docket No. 76N-0381 is required and use of the patient labeling set forth there is encouraged.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that on or before November 29, 1976, the holder of the application submits the following if he has not previously done so:

(i) A supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1 (f)), except that for conjugated estrogen preparations and estradiol valerate sterile oleaginous solution, full manufacturing information shall be submitted.

(ii) A supplement to provide for revised physician labeling in accord with the indications stated above in item B.2.b. of this notice and substantially the same in content as the physician labeling set forth in the notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" published elsewhere in this issue of the FEDERAL REGISTER (Docket No. 76N-0381).

b. Because of the importance of the revised labeling information and the need for its prompt dissemination, the Food and Drug Administration will regard as misbranded and subject to regulatory action, any estrogen product that is covered by this notice and shipped in interstate commerce by a manufacturer, repacker, relabeler, or distributor after November 29, 1976, without labeling which is substantially the same in content as the physician labeling set forth in the notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" (Docket No. 76N-0381), published elsewhere in this issue of the FEDERAL REGISTER, and in accord with the indications set forth in item B.2.b. of this notice. Such labeling may be put into use in advance of approval or submission of a supplement to a new drug application. If a hearing has been requested on the question of effectiveness of a specific product (see Item C below), that product will not be regarded as misbranded if its labeling is otherwise revised as stated above but retains the indication on which the hearing is requested.

c. Approval of an abbreviated new drug application must be obtained prior to marketing such product. The application shall contain the information specified in 21 CFR 314.1(f). Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a)(5), and 21 CFR 300.50, demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201 (p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s)

and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before October 29, 1976, a written notice of appearance and request for hearing, and (2) on or before November 29, 1976, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given below) during working hours, Monday through Friday.

Communications forwarded in response to this notice should be identified with the reference number DESI 7661, directed to the attention of the appropriate officer named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Supplements (identify with NDA number): Division of Metabolism and Endocrine Drug Products (HFD–130), Rm. 14B–03, Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC–20), Rm. 4–65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC–18), Rm. 4–62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–101), Bureau of Drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: September 17, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.76–28435 Filed 9–28–76;8:45 am]

[Docket No. 76N–0356; DESI 1543]

CERTAIN ESTROGEN-CONTAINING DRUGS FOR ORAL OR PARENTERAL USE

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

The Food and Drug Administration is reclassifying the less-than-effective indications for certain estrogen drugs, offering an opportunity for a hearing on the reclassification, and announcing the conditions under which the drugs may be marketed for the indications for which they continue to be regarded as effective. Persons who wish to request a hearing may do so on or before October 29, 1976.

In a notice (DESI 1543; Docket No. FDC–D–405 (now Docket No. 76N–0356)) published in the FEDERAL REGISTER of July 25, 1972 (37 FR 14826), the Food and Drug Administration announced its conclusions that the drug products described below are effective, probably effective, possibly effective, and lacking substantial evidence of effectiveness for their various labeled indications. The notice provided an opportunity for a hearing for the indications concluded at that time to lack substantial evidence of effectiveness. With one exception, no data in support of any of the less-than-effective indications were submitted. The exception concerned the tablet form of Premarin (NDA 4–782), for which data were submitted in support of the probably effective indication for use in selected cases of osteoporosis. The data have been reviewed and determined not to provide substantial evidence of effectiveness. A notice will be published later in the FEDERAL REGISTER setting forth an analysis of the data and reasons for this conclusion. The date of that notice will be the basis of determining the date hearing requests may be submitted for Premarin Tablets only for that indication. Except for the opportunity for a hearing on the effectiveness of Premarin Tablets for osteoporosis, this product is affected by the conclusions of this notice. All less-than-effective indications are now reclassified as lacking substantial evidence of effectiveness.

The notice that follows does not pertain to the indications stated in the notice of July 25, 1972, to lack substantial evidence of effectiveness. No person requested a hearing concerning them, and they are no longer allowable in the labeling. Any such product labeled for those indications is subject to regulatory action.

These drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

I. SHORT-ACTING ESTROGENS

1. NDA 0–740; Ovocylin Dipropionate Injection containing estradiol dipropionate; Ciba Pharmaceutical Co., Division of Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.

2. NDA 1–543; Estrugenone Suspension containing estrone; Kremers-Urban Co., P.O. Box 2038, Milwaukee, WI 53201.

3. NDA 3–977; Theelin Aqueous Suspension containing estrone; Parke, Davis & Co., G.P.O. Box 118, Detroit, MI 48232.

4. NDA 4–823; Estrone Aqueous Suspension containing estrone; Abbott Laboratories, Abbott Park, 14th & Sheridan Rd., North Chicago, IL 60064.

5. NDA 5–292; Estinyl Tablets containing ethinyl estradiol; Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033.

6. NDA 5–490; Lynoral Tablets containing ethinyl estradiol; Organon, Inc., Division of Akzona, Inc., 375 Mt. Pleasant Ave., West Orange, NJ 07052.

7. NDA 8–759; Vallestril Tablets containing methallenestril; G. D. Searle & Co., P.O. Box 5110, Chicago, IL 60680.

8. NDA 4–782; Permarin Tablets; and

9. NDA 10–402; Premarin Intravenous, each containing conjugated estrogens; Ayerst Laboratories, Division American Home Products Corp., 685 Third Ave., New York, NY 10017.

The following short-acting estrogen was not included in the July 25, 1972 notice but is affected by this notice: NDA 16–649; Feminone Tablets containing ethinyl estradiol; The Upjohn

Co., 7171 Portage Rd., Kalamazoo, MI 49002.

II. LONH-ACTING ESTROGENS

1. NDA 8-102; Tace 12 mg Capsules; and

2. NDA 11-444; Tace 25 mg Capsules each containing chlorotrianisene; Merrell-National Laboratories, Division Richardson-Merrell, Inc., P.O. Box 15260, Cincinnati, OH 45215.

3. NDA 9-402; Delestrogen Sterile Oleauginous Solution containing estradiol valerate; Squibbs Pharmaceutical Co., E. R. Squibb & Sons, Inc., Box 4000, Princeton, NJ 08540.

4. NDA 10-753; Estradurin Sterile Powder for Injection containing polyestradiol phosphate; Ayerst Laboratories.

The following long-acting estrogen was not included in the July 25, 1973 notice but is affected by this notice: NDA 16-235; Tace 72 mg Capsules containing chlorotrianisene; Merrell-National Laboratories.

III. SCOPE OF NOTICE

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD-310), 5600 Fishers Lane, Rockville, MD 20852.

IV. CLASSIFICATION AND MARKETING CONDITIONS

A. *Effectiveness classification.* 1. The Food and Drug Administration has reviewed all available evidence and concludes that the drugs are effective for the indications listed in the labeling conditions below. These indications have been reworded to coincide with the physician labeling published elsewhere in this issue of the FEDERAL REGISTER (See discussion in B.2.c.). The drugs now lack substantial evidence of effectiveness for the indications evaluated as probably and possibly effective in the July 25, 1972 notice.

2. The National Academy of Sciences-National Research Council considered the indication, abnormal uterine bleeding due to hormonal imbalance in the absence of organic pathology, to be effective. As stated, however, the indication is deficient in that it does not consider necessary prior diagnostic steps or the use of a progestational agent simultaneously or in sequence. Although the July 25, 1972 notice classified this indication as effective, the Director of the Bureau of Drugs has concluded that while estrogens may have a use in some cases of dysfunction uterine bleeding, the above indication is inadequate, incomplete, and not appropriate in labeling. Therefore, it is not included in the indications listed in the labeling conditions.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* a. Short-Acting Estrogens. Estradiol dipropionate, estrone, and conjugated estrogens are in a form suitable for parenteral administration. Ethinyl estradiol, methallenestril, and conjugated estrogens are in tablet form suitable for oral administration.

b. Long-Acting Estrogens. Chlorotrianisene is in capsule form suitable for oral administration. Estradiol valerate is in sterile oleaginous solution and polyestradiol phosphate is in sterile dry powder form both suitable for parenteral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows for both the short-acting and long-acting estrogens:

Moderate to severe *vasomotor* symptoms associated with the menopause (there is no evidence that estrogens are effective for nervous symptoms or depression which might occur during menopause and they should not be used to treat these conditions).

Female hypogonadism.

Female castration.

Primary ovarian failure.

Postpartum breast engorgement—although estrogens have been widely used for the prevention of postpartum breast engorgement, controlled studies have demonstrated that the incidence of significant painful engorgement in patients not receiving such hormonal therapy is low and usually responsive to appropriate analgesic or other supportive therapy. Consequently, the benefit to be derived from estrogen therapy for this indication must be carefully weighed against the potential increased risk of puerperal thromboembolism associated with the use of large doses of estrogens.

The following indications may be included provided the recommended dosage schedules of the preparation are consistent with those recommended by the Academy:

Atrophic vaginitis.

Kraurosis vulvae.

Prostatic carcinoma—palliative therapy of advanced disease.

Additional indication for short-acting estrogens—breast cancer (for palliation only) in appropriately selected women, such as those who are more than 5 years post-menopausal with progressing inoperable or radiation-resistant disease, and in men with inoperable disease in whom bilateral orchidectomy is contraindicated.

The dosages for any of these indications that are to be used in labeling must be supported by clinical data if the indication was not included in the labeling which the Academy reviewed for that particular drug.

c. The Food and Drug Administration has undertaken a comprehensive review of the estrogen class of drugs, particularly their indications and certain adverse effects which recent papers in the scientific literature have reported to be associated with the use of estrogens. As a result of this review, the Food and Drug Administration concludes that there is a need (1) for extensive revision of the physician labeling for this class of drugs and (2) for patient package labeling. Such labeling has been developed for the use of manufacturers, repackers, relabelers, and distributors of estrogens for general use and is published elsewhere in this issue of the FEDERAL REGISTER. It will be updated as necessary.

Therefore, published elsewhere in this issue of the FEDERAL REGISTER are the following: (1) A notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" setting forth physician labeling text and proposed patient labeling for estrogens. (Docket No. 76N-0381.) (2) A notice of proposed rule making entitled "Estrogens for General Use; Proposed Requirement for Labeling Directed to the Patient" to establish a requirement for patient package labeling for drug products containing estrogens. (Docket No. 76N-0384.)

Because of the wide use of these drugs and thus the general interest of not only manufacturers and physicians but of consumers also, the impact the new labeling may have on future uses of estrogens, and the new information on which the labeling changes are based, the Food and Drug Administration has determined that opportunity should be offered to all interested persons to comment on the text of both the physician labeling and the proposed patient labeling. Although the physician labeling is to be put into use as set forth in item 3 below, comments will be reviewed for appropriate change.

Upon review of the comments and promulgation of a final regulation requiring patient package labeling, a followup DESI notice, applying to DESI drugs and all other estrogens not specifically excepted, will be published in the FEDERAL REGISTER giving the text of current physician labeling, if it is revised on the basis of comments, and the text of current patient labeling. In the meantime, use of the physician labeling set forth in Docket No. 76N-0381 is required and use of the patient labeling set forth there is encouraged.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that on or before November 29, 1976, the holder of the application submits the following if he has not previously done so:

(1) A supplement to provide updating information with respect to items 6

(components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)), except that for conjugated estrogen preparations and estradiol valerate sterile oleaginous solution, full manufacturing information shall be submitted.

(ii) A supplement to provide for revised physician labeling in accord with the indications stated above in item B.2.b. of this notice and substantially the same in content as the physician labeling set forth in the notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" published elsewhere in this issue of the FEDERAL REGISTER (Docket No. 76N–0381).

b. Because of the importance of the revised labeling information and the need for its prompt dissemination, the Food and Drug Administration will regard as misbranded and subject to regulatory action, any estrogen product that is covered by this notice and shipped in interstate commerce by a manufacturer, repacker, relabeler, or distributor after November 29, 1976 without labeling which is substantially the same in content as the physician labeling set forth in the notice entitled "Physician Labeling and Patient Labeling for Estrogens for General Use" (Docket No. 76N–0381), published elsewhere in this issue of the FEDERAL REGISTER, and in accord with the indications set forth in item B.2.b. of this notice. Such labeling may be put into use in advance of approval or submission of a supplement to a new drug application. If a hearing has been requested on the question of effectiveness of a specific product (see Item C below), that product will not be regarded as misbranded if its labeling is otherwise revised as stated above but retains the indication on which the hearing is requested.

c. (i) Approval of abbreviated new drug application must be obtained prior to marketing any such product except estradiol valerate sterile oleaginous solution. The abbreviated application shall contain the information specified in 21 CFR 314.1(f), except that applications for conjugated estrogens shall include full manufacturing information as required by items 7 (composition) and 8 (methods, facilities, and controls) of the new drug application form FD–356H (21 CFR 314.1(c)).

(ii) For estradiol valerate sterile oleaginous solution, approval of a full new drug application (21 CFR 314.1(c)(2)) must be obtained prior to marketing such product.

d. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111 (a)(5), demonstrating the effectiveness of the drug(s) for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice.

Notice is given to the holder(s) of the new drug application(s), and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug application(s) and all amendments and supplements thereto providing for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice on the ground that new information before him with respect to the drug product(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug product(s) will have all the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any application(s) supplemented, in accord with this notice, to delete the claim(s) lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201 (p) of the act, or pursuant to section 107 (c) of the Drug Amendments of 1962; or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicant(s) and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug application(s) providing for the claim(s) involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products. The opportunity for a hearing does not apply at this time to Premarin Tablets for the indication osteoporosis for reasons discussed above.

If an applicant or any person subject to this notice pursuant to 21 CFR 310.6 elects to avail himself of the opportunity for a hearing, he shall file (1) on or before October 29, 1976, a written notice of appearance and request for hearing, and (2) on or before November 29, 1976, the data, information, and analyses on which he relies to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to avail himself of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indication(s) lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk (address given below) during working hours, Monday through Friday.

Communications forwarded in response to this notice should be identified with the reference number DESI 1543, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Supplements (identify with NDA number): Division of Metabolic and Endocrine Drug Products (HFD–130), Rm. 14B–03, Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Request for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFC–20), Rm. 4–65.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC–18), Rm. 4–62.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–101), Bureau of Drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: September 17, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.76–28436 Filed 9–28–76;8:45 am]

[Docket No. 76N–0381; DESI No's. 740, 1543, 2238, and 7661]

PHYSICIAN LABELING AND PATIENT LABELING FOR ESTROGENS FOR GENERAL USE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration (FDA) is providing revised physician labeling as a guide for manufacturers and distributors of estrogenic drug products for general use and seeking comments on patient labeling for those drugs. Many of those products have been reviewed as part of the Drug Efficacy Study. The need for revised physician labeling and available patient labeling arises principally from reports which associate an increased risk of adverse effects with the use of estrogens. Interested persons are invited to comment on the patient labeling on or before November 29, 1976. Comments will be considered and if the text is revised, it will be published in a subsequent notice. Comments may also be made on the physician labeling.

I. SCOPE

Various notices published in the FEDERAL REGISTER as part of the Drug Efficacy Study Implementation (DESI) project have covered specific estrogens. These include: DESI 740 (36 FR 21537, November 10, 1971; 38 FR 26824, September 26, 1973; 40 FR 8242, February 26, 1975; 40 FR 32774, August 4, 1975); DESI 1543 (37 FR 14826; July 25, 1972); DESI 2238 (37 FR 15028; July 27, 1972); DESI 7661 (37 FR 18225; September 8, 1972). The drug products in these notices were classified as effective for one or more indications.

In addition, other notices are published elsewhere in this issue of the FEDERAL REGISTER giving the Administration's findings concerning the effectiveness of numerous estrogenic drug products and stating specific indications for which those products are effective. (See DESI 1543 (Docket No. 76N–0356); DESI 2238 (Docket No. 76N–0261); DESI 7661 (Docket No. 76N–0377).)

This notice applies not only to the particular estrogens subject to the Drug Efficacy Study, including products containing estrogens in fixed combination with other drugs (e.g., estrogen-tranquilizer combinations for which hearing requests are under review and which are not referenced above), but to all such products that are the subject of a new drug application approved either before or after the Drug Amendments of 1962 and also to any identical, related, or similar drug product (21 CFR 310.6) whether or not it is the subject of an approved new drug application, with two exceptions. The exceptions are estrogen-progestagen oral contraceptives and oral diethylstilbestrol (DES) products intended for postcoital contraception, which should be labeled according to guidelines provided specifically for those drugs. (21 CFR 310.501).

It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes by writing to the Food and Drug Administration, Bureau of Drugs, Division of Drug Labeling Compliance (HFD–310), 5600 Fishers Lane, Rockville, MD 20852.

The following drug entities, along with their salts and esters, are examples of estrogens which are covered by this notice; however, this is not intended to be an exhaustive listing: Benzestrol, chlorotrianisene, conjugated estrogens, dienestrol, diethylstilbestrol, esterfied estrogens, estradiol, estriol, estrone, ethinyl estradiol, hexestrol, mestranol, methallenestril, piperazine estrone sulfate, polyestradiol phosphate, and promethestrol.

II. BACKGROUND

FDA is charged with assuring that drugs are safe and effective for their intended use and that their labeling provides adequate information for such use and is not false or misleading. The full disclosure of information to physicians concerning such matters as effectiveness, contraindications, warnings, precautions, and adverse reactions is an important element in the discharge of that responsibility. The statutory scheme anticipates that new information concerning the safety and effectiveness of marketed drugs may require that FDA prescribe changes in their labeling to reveal limitations on use or warn of previously unanticipated hazards. Many labeling changes have been effected as a result of the Drug Efficacy Study.

The scientific literature has reported an increased risk of endometrial cancer in postmenopausal women treated with estrogens for long periods. In addition, reports of an association between intrauterine exposure to sex hormones and development of congenital anomalies have appeared, as well as reports of an increased risk of vaginal cancer in adolescent daughters exposed in utero to an estrogen (diethylstilbestrol). A specific warning about the possibility of vaginal cancer has already been required in the labeling of diethylstilbestrol and closely related congeners. (DESI 740, 40 FR 32774, August 4, 1975.) Although similar data are not available for other estrogens, it cannot be presumed that they will not induce the same changes.

These reports showing or suggesting an association between estrogen use and the occurrence of adverse effects generate a need for revision of the labeling to inform physicians of these recent findings. The nature of the findings and the uses of estrogens are such that information should also be furnished to the patient.

Elsewhere in this issue of the FEDERAL REGISTER the Commissioner of Food and Drugs is proposing to amend 21 CFR Part 310 by adding a new § 310.515 that will require patient labeling for all estrogenic drug products for general use. Proposed § 310.515 specifies the kind of information to be contained in the patient labeling, without giving the text of the labeling, and the way in which it is to be made available to the patient. The patient labeling for estrogens is to be based on the approved physician labeling for those drugs.

As a result of the new information, the Food and Drug Administration has undertaken an extensive review of available information about estrogens. In addition, the evidence related to estrogens and endometrial cancer was reviewed by FDA's Obstetrics and Gynecology Advisory Committee at an open meeting held on December 16, 1975. Concluding that there appears to be an increased risk of endometrial cancer associated with long-term estrogen use in postmenopausal women, the Advisory Committee recommended that the labeling be revised to reflect this finding and that patient labeling be developed. A copy of the minutes of that meeting has been placed on file in the office of the Hearing Clerk (HFC–20), Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852 as part of the file on the proposed regulation § 310.515 (Docket No. 76N–0384).

On the basis of the estrogens review, the text of the revised physician labeling and the text for patient labeling are set forth later in this notice. Among the scientific papers reviewed are those listed in the notice of proposed rulemaking to establish a new § 310.515 published elsewhere in this issue of the FEDERAL REGISTER. The references are also cited in the bibliography given in the physician labeling proposed herein.

The Director of the Bureau of Drugs advises that the patient labeling in this notice for estrogen drug products complies with the patient labeling requirements proposed in § 310.515 and can be relied upon by manufacturers, packers, and distributors to meet those requirements.

In the FEDERAL REGISTER of April 7, 1975 (40 FR 15392), the Commissioner proposed new requirements concerning

the content and format of prescription drug labeling. The Director of the Bureau of Drugs concludes that the physician labeling for estrogens for general use is consistent with the proposed prescription drug labeling format. In addition, that notice proposed (§ 1.112(c)(6)(ii)) that printed patient information be referenced under the "Precautions" section of the physician labeling and reprinted at the end of it. The physician labeling set forth here provides for that format to be used when patient labeling is put into use.

III. Comments Solicited

Because of the information that has become available, its impact on manufacturers, physicians, and patients, and the wide usage of estrogens, the Director of the Bureau of Drugs seeks comment on the text of both the full disclosure physician labeling and the patient labeling. Comment as to the appropriateness of the indications for any DESI drug is not sought, as that opportunity has been given in the various notices published to implement the Drug Efficacy Study, including the DESI notices published elsewhere in this issue of the Federal Register and referred to above.

IV. Implementation

Although comment on the labeling is sought, the importance of the new information is such that the revised labeling for physicians should be put into use without delay. Patient labeling may also be used and its use is encouraged, but since the requirement for patient labeling for these drugs is the subject of a rule making procedure, use of such labeling may be delayed until the rule making procedure is completed.

The Food and Drug Administration will regard as misbranded and subject to regulatory action, any estrogen product for general use that is shipped in interstate commerce by manufacturers, repackers, relabelers, or distributors after November 29, 1976 without labeling which is substantially the same in content as the physician labeling set forth in this notice. Such labeling may be put into use in advance of approval or submission of a supplement to a new drug application.

Holders of approved new drug applications for estrogen drug products for general use shall submit supplements on or before November 29, 1976 to provide for the revised physician labeling.

The notice of proposed rule making for patient labeling proposes that that requirement will become effective 60 days after it is published as a final order.

Upon reviewing the comments received on the physician and patient labeling for estrogens, the Director of the Bureau of Drugs will publish a followup DESI notice in the Federal Register applicable not only to DESI drugs but to all estrogens for general use, giving the text of the patient labeling and if necessary on the basis of comments, the text of revised physician labeling. Notwithstanding changes that may appear in the text of patient labeling published after the comment period, such labeling that is already in use and substantially the same in content as the text given below in item VI may continue to be used for 120 days after publication of the final regulation § 310.515.

V. Physician Labeling

The physician labeling for estrogens for general use is set forth below.

ESTROGEN LABELING

Boxed Warning

1. *Estrogens Have Been Reported To Increase The Risk of Endometrial Carcinoma.*

Three independent case control studies have shown an increased risk of endometrial cancer in postmenopausal women exposed to exogenous estrogens for prolonged periods.[1-3] This risk was independent of the other known risk factors for endometrial cancer. These studies are further supported by the finding that incidence rates of endometrial cancer have increased sharply since 1969 in eight different areas of the United States with population-based cancer reporting systems, an increase which may be related to the rapidly expanding use of estrogens during the last decade.[4]

The three case control studies reported that the risk of endometrial cancer in estrogen users was about 4.5 to 13.9 times greater than in nonusers. The risk appears to depend on both duration of treatment[1] and on estrogen dose.[2] In view of these findings, when estrogens are used for the treatment of menopausal symptoms, the lowest dose that will control symptoms should be utilized and medication should be discontinued as soon as possible. When prolonged treatment is medically indicated, the patient should be reassessed on at least a semiannual basis to determine the need for continued therapy. Although the evidence must be considered preliminary, one study suggests that cyclic administration of low doses of estrogen may carry less risk than continuous administration;[3] it therefore appears prudent to utilize such a regimen.

Close clinical surveillance of all women taking estrogens is important. In all cases of undiagnosed persistent or recurring abnormal vaginal bleeding, adequate diagnostic measures should be undertaken to rule out malignancy.

There is no evidence at present that "natural estrogens are more or less hazardous than "synthetic" estrogens at equiestrogenic doses.

2. *Estrogens should not be used during pregnancy.*

The use of female sex hormones, both estrogens and progestagens, during early pregnancy may seriously damage the offspring. It has been shown that females exposed in utero to diethylstilbestrol, a non-steroidal estrogen, have an increased risk of developing in later life a form of vaginal or cervical cancer that is ordinarily extremely rare.[5, 6] This risk has been estimated as not greater than 4 per 1000 exposures.[7] Furthermore, a high percentage of such exposed women (from 30 to 90 percent) have been found to have vaginal adenosis.[8-12] It is not known whether this condition is a precursor of vaginal malignancy. Although similar data are not available with the use of other estrogens, it is reasonable to presume they would induce similar changes.

Several reports suggest an association between intrauterine exposure to female sex hormones and congential anomalies, including congential heart defects and limb reduction defects.[13-15] One case control study[16] estimated a 4.7 fold increased risk of limb reduction defects in infants exposed in utero to sex hormones (oral contraceptives, hormone withdrawal tests for pregnancy, or attempted treatment for threatened abortion). Some of these exposures were very short and involved only a few days of treatment. The estimated rate of these abnormalities in the population from which the cases were obtained was 0.2 abnormalities per 1000 live births in the years 1968–1973. It is not known how many of the 0.2 abnormalities per thousand live births arose in women who were taking sex hormones; therefore 0.2 per 1000 is to some degree an overestimate of the spontaneous rate of these abnormalities. These data suggest that the risk of limb reduction defects in exposed fetuses is somewhat less than 1 per 1000.

In the past, female sex hormones have been used during pregnancy in an attempt to treat threatened or habitual abortion. There is considerable evidence that estrogens are ineffective for these indications, and there is no evidence from well controlled studies that progestagens are effective for these uses.

If (*name of drug*) is used during pregnancy, or if the patient becomes pregnant while taking this drug, she should be apprised of the potential risks to the possibility of termination of the fetus, and, in light of these risks, of the pregnancy.

(For products containing diethylstilbesterol but not labeled for postcoital contraception, labeling must include before the description section the following statement in block capital letters: THIS DRUG PRODUCT SHOULD NOT BE USED AS A POSTCOITAL CONTRACEPTIVE.[17])

DESCRIPTION

(To be supplied by manufacturer)

(*Description should include the following information.*)

1. The proprietary name and the established name, if any, of the drug product;

2. The type of dosage form and the route of administration to which the labeling applies;

3. The same qualitative and/or quantitative ingredient information as required for labels;

4. If the product is sterile, a statement of that fact;

5. The pharmacological or therapeutic class of the drug product;

6. The chemical name and structural formula. When appropriate, other im-

See footnotes at end of article.

portant chemical or physical information, such as physical constants, pH, etc., should also be included.

CLINICAL PHARMACOLOGY

(To be supplied by the manufacturer)

INDICATIONS

(Depending on the specific drug and dosage form (see DESI notices Nos. 1543, 2238, and 7661 published elsewhere in this issue of the FEDERAL REGISTER for specific indications) the labeling may include appropriate indications from those stated below.)

(*Name of Drug*) is indicated in the treatment of:

1. Moderate to severe *vasomotor* symptoms associated with the menopause. (There is no evidence that estrogens are effective for nervous symptoms or depression which might occur during menopause, and they should not be used to treat these conditions.)
2. Atrophic vaginitis.
3. Kraurosis vulvae.
4. Female hypogonadism.
5. Female castration.
6. Primary ovarian failure.
7. Breast cancer (for palliation only) in appropriately selected women, such as those who are more than 5 years postmenopausal with progressing inoperable or radiation-resistant disease, and in men with inoperable disease in whom bilateral orchidectomy is contraindicated.
8. Prostatic carcinoma — palliative therapy of advanced disease.
9. Postpartum breast engorgement—Although estrogens have been widely used for the prevention of postpartum breast engorgement, controlled studies have demonstrated that the incidence of significant painful engorgement in patients not receiving such hormonal therapy is low and usually responsive to appropriate analgesic or other supportive therapy. Consequnetly, the benefit to be derived from estrogen therapy for this indication must be carefully weighted against the potential increased risk of puerperal thromboembolism associated with the use of large doses of estrogens

(Name of drug) has not been shown to be effective for any purpose during pregnancy and its use may cause severe harm to the fetus (see boxed warning).

Contraindications

Estrogens should not be used in women (or men) with any of the following conditions:

1. Known or suspected cancer of the breast except in appropriately selected patients with progressing inoperable or radiation resistant disease.
2. Known or suspected estrogen-dependent neoplasia.
3. Known or suspected pregnancy (See Boxed Warning).
4. Undiagnosed abnormal genital bleeding.
5. Cerebral vascular or coronary artery disease (except when used in the treatment of breast or prostatic malignancy).
6. Thrombophlebitis or thromboembolic disorders.
7. A past history of thrombophlebitis or thromboembolic disorders associated with previous estrogen use (except when used in treatment of breast or prostatic malignancy).

Warnings

1. *Induction of malignant neoplasms.* Long term continuous administration of natural and synthetic estrogens in certain animal species increases the frequency of carcinomas of the breast, cervix, vagina, and liver. There is now evidence that estrogens increase the risk of carcinoma of the endometrium in humans. (See Boxed Warning).

At the present time there is no satisfactory evidence that estrogens given to postmenopausal women increase the risk of cancer of the breast,[18] although a recent long-term followup of a single physician's practice has raised this possibility.[18a] Because the animal data indicate a need for caution, women with a strong family history of breast cancer or who have breast nodules, fibrocystic disease, or abnormal mammograms should be administered an estrogen with caution and a careful breast examination should be performed.

2. *Gall bladder disease.* A recent study has reported a 2 to 3-fold increase in the risk of surgically confirmed gall bladder disease in women receiving postmenopausal estrogens,[18] similar to the 2-fold increase previously noted in users of oral contraceptives.[19]

3. *Effects similar to those caused by estrogen-progestagen oral contraceptives.* There are several serious adverse effects of oral contraceptives, most of which have not, up to now, been documented as consequences of postmenopausal estrogen therapy. This may reflect the comparatively low doses of estrogen used in postmenopausal women. It would be expected that the larger doses of estrogen used to treat prostatic or breast cancer or postpartum breast engorgement are more likely to result in these adverse effects, and, in fact, it has been shown that there is an increased risk of thrombosis in men receiving estrogens for prostatic cancer and women for postpartum breast engorgement.[20-23]

a. *Thromboembolic disease.* It is now well established that users of oral contraceptives have an increased risk of various thromboembolic and thrombotic diseases, including thrombophlebitis, pulmonary embolism, stroke, and myocardial infarction.[24-31] Cases of retinal thrombosis and optic neuritis have been reported in oral contraceptive users. There is evidence that the risk of several of these adverse reactions is related to the dose of the drug.[32,33] An increased risk of postsurgery thromboembolic complications has also been reported in users of oral contraceptives.[34,35] If feasible, estrogen should be discontinued at least 4 weeks before, and not resumed until at least 4 weeks after, surgery of the type associated with an increased risk of thromboembolism.

Although to date no increased rate of thromboembolic and thrombotic disease in postmenopausal users of estrogens has been detected[18,36] this does not rule out the possibility that such an increase may be present or that subgroups of women who have underlying risk factors or who are receiving larger doses of estrogen may have an increased risk. Therefore estrogens should not be used in persons with thromboembolic disorders and they should not be used (except in treatment of malignancy) in persons with a history of such disorders in association with estrogen use or in patients with cerebral vascular or coronary artery disease.

Large doses of estrogen (5 mg conjugated estrogens per day), comparable to those used to treat cancer of the prostate and breast, have been shown in a large prospective clinical trial in men[37] to increase the risk of nonfatal myocardial infarction, pulmonary embolism and thrombophlebitis. When estrogen doses of this size are used, any of the thromboembolic and thrombotic adverse effects associated with oral contraceptive use should be considered a clear risk.

b. *Hepatic adenoma.* Benign hepatic adenomas appear to be associated with the use of oral contraceptives.[38-40] Although benign, and rare, these may rupture and cause death through intraabdominal hemorrhage. Such lesions have not yet been reported in association with other estrogen or progestagen preparations but should be considered in estrogen users having abdominal pain and tenderness, abdominal mass, or hypovolemic shock. Hepatocellular carcinoma has also been reported in women taking estrogen-containing oral contraceptives.[39] The relationship of this malignancy to these drugs is not known at this time.

c. *Elevated blood pressure.* Increased blood pressure is not uncommon in women using oral contraceptives. There is now evidence that this occurs with use of estrogens in the menopause[41] and blood pressure should be monitored with estrogen use, especially if high doses are used.

d. *Glucose tolerance.* A worsening of glucose tolerance has been observed in a significant percentage of patients on estrogen-containing oral contraceptives. For this reason, diabetic patients should be carefully observed while receiving estrogen.

4. *Hypercalcemia.* Estrogens may lead to severe hypercalcemia in patients with breast cancer and bone metastases. If this occurs, the drug should be stopped and appropriate measures taken to reduce the serum calcium level.

Precautions

A. General Precautions.

1. A complete medical and family history should be taken prior to the initiation of any estrogen therapy. The pretreatment and periodic physical examinations should include special reference to blood pressure, breasts, abdomen, and pelvic organs, and should include a Papanicolau smear. As a general rule, estrogen should not be prescribed for longer than one year without another physical examination being performed.

2. Fluid retention—Because estrogens may cause some degree of fluid retention,

See footnotes at end of article.

conditions which might be influenced by this factor such as epilepsy, migraine, and cardiac or renal dysfunction, require careful observation.

3. Certain patients may develop undesirable manifestations of excessive estrogenic stimulation, such as abnormal or excessive uterine bleeding, mastodynia, etc.

4. Oral contraceptives appear to be associated with an increased incidence of mental depression. Although it is not clear whether this is due to the estrogenic or progestagenic component of the contraceptive, patients with a history of depression should be carefully observed.

5. Preexisting uterine fibromyomata may increase in size while using estrogen.

6. The pathologist should be advised of estrogen therapy when relevant specimens are submitted.

7. Patients with a past history of jaundice during pregnancy have an increased risk of recurrence of jaundice while receiving estrogen-containing oral contraceptive therapy. If jaundice develops in any patient receiving estrogen, the medication should be discontinued while the cause is investigated.

8. Estrogens may be poorly metabolized in patients with impaired liver function and they should be administered with caution in such patients.

9. Because estrogens influence the metabolism of calcium and phosphorus, they should be used with caution in patients with metabolic bone diseases that are associated with hypercalcemia or in patients with renal insufficiency.

10. Because of the effects of estrogens on epiphyseal closure, they should be used judiciously in young patients in whom bone growth is not complete.

11. Certain endocrine and liver function tests may be affected by estrogen-containing oral contraceptives. The following similar changes may be expected with larger doses of estrogen:

a. Increased sulfobromophthalein retention.

b. Increased prothrombin and factors VII, VIII, IX, and X; decreased antithrombin 3; increased norepinephrine-induced platelet aggregability.

c. Increased thyroid binding globulin (TBG) leading to increased circulating total thyroid hormone, as measured by PBI, T4 by column, or T4 by radioimmunoassay. Free T3 resin uptake is decreased, reflecting the elevated TBG; free T4 concentration is unaltered.

d. Impaired glucose tolerance.

e. Decreased pregnanediol excretion.

f. Reduced response to metyrapone test.

g. Reduced serum folate concentration.

h. Increased serum triglyceride and phospholipid concentration.

B. (Insert the following when patient labeling is required or used in advance of a requirement.) Information for the Patient. See text of Patient Package Insert which is attached below.

C. Pregnancy Category X (Pregnancy category designations and labeling statements are set forth in 40 FR 15392–15399). See Contraindications and Boxed Warning.

D. Nursing Mothers. It is not known whether this drug is excreted in human milk. As a general principle, the administration of any drug to nursing mothers should be done only when clearly necessary since many drugs are excreted in human milk.

Adverse Reactions

(See Warnings regarding induction of neoplasia, adverse effects on the fetus, increased incidence of gall bladder disease, and adverse effects similar to those of oral contraceptives, including thromboembolism.) The following additional adverse reactions have been reported with estrogenic therapy, including oral contraceptives:

1. *Genitourinary system.*
Breakthrough bleeding, spotting, change in menstrual flow.
Dysmenorrhea.
Premenstrual-like syndrome.
Amenorrhea during and after treatment.
Increase in size of uterine fibromyomata.
Vaginal candidiasis.
Change in cervical eversion and in degree of cervical secretion.
Cystitis-like syndrome.

2. *Breast.*
Tenderness, enlargement, secretion

3. *Gastrointestinal.*
Nausea, vomiting.
Abdominal cramps, bloating.
Cholestatic jaundice.

4. *Skin.*
Chloasma or melasma which may persist when drug is discontinued.
Erythema multiforme.
Erythema nodosum.
Hemorrhagic eruption.
Loss of scalp hair.
Hirsutism.

5. *Eyes.*
Steepening of corneal curvature.
Intolerance to contact lenses.

6. *CNS.*
Headache, migraine, dizziness.
Mental depression.
Chorea.

7. *Miscellaneous.*
Increase or decrease in weight.
Reduced carbohydrate tolerance.
Aggravation of porphyria.
Edema.
Changes in libido.

Overdosage

Serious ill effects have not been reported following the ingestion of large doses of estrogen-containing oral contraceptives by young children. Overdosage of estrogen may cause nausea, and withdrawal bleeding may occur in females.

Dosage and Administration

1. *Given cyclically for short term use only:*

For treatment of moderate to severe *vasomotor* symptoms, atrophic vaginitis, or kraurosis vulvae associated with the menopause.

The lowest dose that will control symptoms should be chosen and medication should be discontinued as promptly as possible.

Administration should be cyclic (e.g., 3 weeks on and 1 week off).

Attempts to discontinue or taper medication should be made at 3 to 6 month intervals.

The usual dosage range is *(to be supplied by manufacturer)*.

2. *Given cyclically:*
Female hypogonadism.
Female castration.
Primary ovarian failure.
(Dosage to be inserted.)

3. *Given for a few days:*
Prevention of postpartum breast engorgement.
(Dosage to be inserted.)

4. *Given chronically:*
Inoperable progressing prostatic cancer. (Dosage to be inserted).

Inoperable progressing breast cancer in appropriately selected men and postmenopausal women. (See indications) (Dosage to be inserted.)

Treated patients with an intact uterus sholud be monitored closely for signs of endometrial cancer and appropriate diagnostic measures should be taken to rule out malignancy in the event of persistent or recurring abnormal vaginal bleeding.

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VI. Patient Labeling

The proposed patient package labeling for estrogens for general use is set forth below.

WHAT YOU SHOULD KNOW ABOUT ESTROGENS

Estrogens are female hormones produced by the ovaries. The ovaries make several different kinds of estrogens. In addition, scientists have been able to make a variety of synthetic estrogens. As far as we know, all these estrogens have the same properties and therefore much the same usefulness, side effects, and risks. This leaflet is intended to help you understand what estrogens are used for, the risks involved in their use, and how to use them as safely as possible.

This leaflet includes the most important information about estrogens, but not all the information. If you want to know more, you can ask your doctor or pharmacist to let you read the package insert prepared for the doctor.

USES OF ESTROGEN

Estrogens are prescribed by doctors for a number of purposes, including:

1. To provide estrogen during a period of adjustment when a woman's ovaries no longer produce it, in order to prevent certain uncomfortable symptoms of estrogen deficiency. (All women normally stop producing estrogens, generally between the ages of 45–50; this is called the menopause.)

2. To prevent symptoms of estrogen deficiency when a woman's ovaries have been removed surgically before the natural menopause.

3. To prevent pregnancy. (Estrogens are given along with a progestagen, another female hormone; these combinations are called oral contraceptives or birth control pills. Patient labeling is available to women taking oral contraceptives and they will not be discussed in this leaflet.)

4. To treat certain cancers in men (cancer of the prostate or breast) and in women (certain cancers of the breast when they occur more than 5 years after menopause).

5. To prevent painful swelling of the breasts after pregnancy in women who choose not to nurse their babies.

THERE IS NO PROPER USE OF ESTROGENS IN A PREGNANT WOMAN.

ESTROGENS IN THE MENOPAUSE

In the natural course of their lives, all women eventually experience a fall in estrogen production. This usually occurs between ages 45 and 50 but may occur earlier or later. Sometimes the ovaries may need to be removed before natural menopause by an operation, producing a "surgical menopause."

When the amount of estrogen in the blood begins to decrease many women may develop typical symptoms: Feelings of warmth in the face, neck, and chest or sudden intense episodes of heat and sweating throughout the body (called "hot flashes" or "hot flushes"). These symptoms are sometimes very uncomfortable. A few women eventually develop changes in the vagina (called "atrophic vaginitis") which cause discomfort, especially during intercourse.

Estrogens can be prescribed to treat these symptoms of the menopause. It is estimated that considerably more than half of all women undergoing the menopause have only mild symptoms or no symptoms at all and therefore do not need estrogens. Other women may need estrogens for a few months, while their bodies adjust to lower estrogen levels. Sometimes the need will be for periods longer than six months. In an attempt to avoid over-stimulation of the uterus (womb), estrogens are usually given cyclically during each month of use, that is, three weeks of pills followed by one week without pills.

Sometimes women experience nervous symptoms or depression during menopause. There is no evidence that estrogens are effective for such symptoms and they should not be used to treat them, although other treatment may be needed.

You may have heard that taking estrogens for long periods (years) after the menopause will keep your skin soft and supple and keep you feeling young.

There is no evidence that this is so, however, and such long-term treatment carries important risks.

ESTROGENS TO PREVENT SWELLING OF THE BREASTS AFTER PREGNANCY

If you do not breast feed your baby after delivery, your breasts may fill up with milk and become painful and engorged. This usually begins about 3 to 4 days after delivery and may last for a few days to up to a week or more. Sometimes the discomfort is severe, but usually it is not and can be controlled by pain relieving drugs such as aspirin and by binding the breasts up tightly. Estrogens can be used to try to prevent the breasts from filling up. While this treatment is often successful, in many cases the breasts fill up to some degree in spite of treatment. The dose of estrogens needed to prevent pain and swelling of the breasts is much larger than the dose needed to treat symptoms of the menopause and this may increase your chances of developing blood clots in the legs or lungs (see below). Therefore, it is important that you discuss the benefits and the risks of estrogen use with your doctor if you have decided not to breast feed your baby.

THE DANGERS OF ESTROGENS

1. *Cancer of the uterus.* If estrogens are used in the postmenopausal period for more than a year, there is an increased risk of *endometrial cancer* (cancer of the uterus). Women taking estrogens have roughly 5 to 10 times as great a chance of getting this cancer as women who take no estrogens. To put this another way, while a postmenopausal woman not taking estrogens has one chance in a 1,000 each year of getting cancer of the uterus, a woman taking estrogens has one chance in 100 to 200 each year. For this reason *it is important to take estrogens only when you really need them.*

The risk of this cancer is greater the longer estrogens are used and also seems to be greater when larger doses are taken. For this reason *it is important to take the lowest dose of estrogen that will control symptoms and to take it only as long as it is needed.* If estrogens are needed for longer periods of time, your doctor will want to reevaluate your need for estrogens at least every six months.

Women using estrogens should report any irregular vaginal bleeding to their doctors; such bleeding may be of no importance, but it can be an early warning of cancer of the uterus. If you have undiagnosed vaginal bleeding, you should not use estrogens until a diagnosis is made and you are certain there is no cancer of the uterus.

2. *Other possible cancers.* Estrogens can cause development of other tumors in animals, such as tumors of the breast, cervix, vagina, or liver, when given for a long time. At present there is no good evidence that women using estrogens in the menopause have an increased risk of such tumors, but there is no way yet to be sure they do not. This is a further reason to use estrogens only when clearly needed. While you are taking estrogens, it is important that you go to your doctor at least once a year to check on your uterus, cervix, vagina, and breasts. Also, if members of your family have had breast cancer or if you have breast nodules or abnormal mammograms (breast x-rays), your doctor will want to carry out especially careful examination of your breasts.

3. *Gall bladder disease.* Women who use estrogens after menopause are about 2½ times as likely to develop gall bladder disease needing surgery as women who do not use estrogens. Birth control pils have a similar effect.

4. *Abnormal blood clotting.* Oral contraceptives increase the risk of blood clotting in various parts of the body. This can result in a stroke (if the clot is in the brain), a heart attack (clot in a blood vessel of the heart), or a pulmonary embolus (a clot which forms in the legs or pelvis, then breaks off and travels to the lungs). Any of these can be fatal.

At this time use of estrogens in the menopause is not known to cause such blood clotting, but this has not been fully studied and there could still prove to be such a risk. It is recommended that if you have had a heart attack, angina, or stroke, or if you have had clotting in the legs or lungs associated with use of estrogens or birth control pills, you should not use estrogens (unless they are being used to treat cancer of the breast or prostate).

The larger doses of estrogen used to prevent swelling of the breasts after pregnancy have been reported to cause clotting in the legs and lungs.

SPECIAL WARNING ABOUT PREGNANCY

You should not receive estrogen if you are pregnant, but pregnant women sometimes do get estrogen anyway. If this occurs, there is a greater than usual chance that the developing child will be born with a birth defect, although the possibility remains fairly small. If the child is a female, she has an increased risk of developing cancer of the vagina or cervix later in life (in the teens or twenties). Every possible effort should be made to avoid exposure to estrogens during pregnancy. If exposure occurs, see your doctor.

OTHER EFFECTS OF ESTROGENS

In addition to the serious known risks of estrogens described above, estrogens have the following side effects and potential risks:

1. *Nausea and vomiting.* The most common side effect of estrogen therapy is nausea. Vomiting is less common.

2. *Effects on breasts.* Estrogens may cause breast tenderness or enlargement and may cause the breasts to secrete a liquid. These effects are not dangerous.

3. *Effects on the uterus.* Estrogens may cause benign fibroid tumors of the uterus to get larger.

Some women will have menstrual bleeding when estrogens are stopped for one week each month. But if the bleeding occurs on days you are still taking estrogens you should report this to your doctor.

4. *Effects on liver.* Women taking oral contraceptives develop on rare occasions a benign tumor of the liver which can rupture and bleed into the abdomen. So far, these tumors have not been reported in women using estrogens in the menopause, but you should report any swelling or unusual pain of tenderness in the abdomen to your doctor immediately.

Women with a past history of jaundice (yellowing of the skin and white parts of the eyes) may get jaundice again during estrogen use. If this occurs, stop taking estrogens and see your doctor.

5. *Mental depression.* A few women develop depression while on estrogen therapy. If you have had depression in the past, it may reappear or get worse during estrogen therapy. If you do become severely depressed, stop taking estrogens and call your doctor.

6. *Other effects.* Estrogens may cause excess fluid to be retained in the body. This may make some conditions worse, such as epilepsy, migraine, heart disease, or kidney disease.

A spotty darkening of the skin can develop, particularly in the face, and may persist.

SUMMARY

Estrogens have important uses, but they have serious risks as well. You must decide, with your doctor, whether the risks are acceptable to you in view of the benefits of treatment. Except where your doctor has prescribed estrogens for use in special cases of cancer of the breast or prostate, you should not use estrogens if you have cancer of the breast or uterus, are pregnant, have undiagnosed abnormal vaginal bleeding, clotting in the legs or lungs, or have had a stroke, heart attack or angina, or clotting in the legs or lungs in the past while taking estrogens.

You can help your doctor prescribe estrogens as safely as possible by understanding that he will require regular physical examinations while you are taking them and will try to discontinue the drug as soon as he can and use the smallest dose possible. Be alert for signs of trouble including:

1. Abnormal bleeding from the vagina.
2. Pains in the calves or chest or sudden shortness of breath, or coughing blood (indicating possible clots in the legs, heart, or lungs).
3. Severe headache, dizziness, faintness, or changes in vision (indicating possible developing clots in the brain or eye).
4. Breast lumps (you should ask your doctor how to examine your own breasts).
5. Jaundice (yellowing of the skin).
6. Mental depression.

HOW SUPPLIED; DOSAGE AND ADMINISTRATION

(A description of the particular product, instructions on dosage and administration to be supplied by manufacturer.)

Interested persons may, on or before November 29, 1976 submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20852, written comments (prefer-

ably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding the physician labeling and the patient labeling. Received comments may be seen in the above office during working hours Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.31) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated: September 17, 1976.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.76–28437 Filed 9–28–76;8:45 am]

federal register

WEDNESDAY, SEPTEMBER 29, 1976

PART IX:

CONSUMER PRODUCT SAFETY COMMISSION

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PROCEDURES FOR PETITIONING FOR RULEMAKING UNDER SECTION 10 OF THE CONSUMER PRODUCT SAFETY ACT

Interim Rules

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1110—PROCEDURES FOR PETITIONING FOR RULEMAKING UNDER SECTION 10 OF THE CONSUMER PRODUCT SAFETY ACT

Interim Rules

• *Purpose.* The purpose of this document is to establish interim procedures (16 CFR Part 1110) governing the submission and disposition of petitions for the issuance, amendment, or revocation of consumer product safety rules filed with the Consumer Product Safety Commission under section 10 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2059). Although these procedures become effective as interim procedures upon publication in the FEDERAL REGISTER, the Commission seeks public comment on the procedures.•

These procedures apply only to petitions filed under section 10 of the Consumer Product Safety Act. Requests for the consideration of rulemaking matters under the Consumer Product Safety Act which do not involve consumer product safety rules are not required to comply with these procedures. However, persons filing such requests are encouraged to follow as closely as possible the requirements and recommendations for filing petitions under section 10 of the CPSA as set forth in § 1110.7 of this part.

Petitions regarding products regulated under the other acts administered by the Commission: the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.), or the Refrigerator Safety Act (15 U.S.C. 1211 et seq.) are governed by the Administrative Procedure Act (5 U.S.C. 553 (e)) and, where applicable, existing Commission procedures at 16 CFR 1607.14, 16 CFR 1500.82, 16 CFR 1500.201, and 21 CFR 2.65. However, persons filing such petitions are encouraged to follow as closely as possible the requirements and recommendations for filing petitions under section 10 of the CPSA as set forth in § 1110.7 of this part.

Section 10 of the Consumer Product Safety Act provides that "any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule." As defined in section 3(a)(2) of the CPSA, a "consumer product safety rule" is either a consumer product safety standard described in section 7(a) of the act or a rule under section 8 of the act declaring a consumer product a banned hazardous product.

A "consumer product safety standard," as described in section 7(a) of the CPSA, consists of one or more of the following types of requirements: (i) "Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product," or (ii) "requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions." A consumer product safety standard is issued by the Commission pursuant to the procedures set forth in sections 7 and 9 of the act and regulations issued under those sections of the act (16 CFR Part 1105; 16 CFR Part 1109).

A "banned hazardous product" as described in section 8 of the act is a consumer product which is being, or will be, distributed in commerce and which presents an unreasonable risk of injury for which no feasible consumer product safety standard under the CPSA would adequately protect the public. The Commission may declare a product a banned hazardous product under the procedures of section 8 and 9 of the act.

Before commencing a proceeding to promulgate or materially amend a consumer product safety rule under sections 7, 8, and 9 of the CPSA, the Commission must preliminarily determine that the product presents an unreasonable risk of injury, that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product and, in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under the act would adequately protect the public from the unreasonable risk of injury associated with such product.

Before commencing a proceeding to revoke a consumer product safety rule, the Commission, under section 9(e) of the act, must find a change in circumstances such that consumers are no longer exposed to an unreasonable risk of injury associated with a consumer product or that a rule is no longer necessary to eliminate or reduce an unreasonable risk of injury associated with a consumer product.

Section 10 of the CPSA further provides that within 120 days after a person or group files a petition for issuance, amendment or revocation of a consumer product safety rule, "the Commission shall either grant or deny the petition * * *. If the Commission denies such petition it shall publish in the FEDERAL REGISTER its reasons for such denial." If the Commission grants such petition, it must promptly commence an appropriate proceeding under section 7 or 8 of the CPSA (or section 9 in the case of a revocation or minor modification of a rule).

Since the CPSA does not specify the reasons the Commission must use in deciding whether or not to grant petitions, the Commission believes that in addition to establishing procedures for the treatment of petitions, the Commission should also describe in this document the major factors it considers in deciding petitions. These factors, including specific information relevant to these factors, are based on the language of the act, the legislative history, and other consideration relevant to effectuating the purpose of the act. They are enumerated below in § 1110.11.

As to any petition filed under section 10 after October 27, 1975, if the Commission denies the petition or if it fails to grant or deny the petition within 120 days, the petitioner may commence a civil action in a United States district court to compel the Commission to initiate the action requested.

Section 10(e)(2) of the act provides that if the petitioner can demonstrate to the satisfaction of the court, by a preponderance of the evidence in a de novo proceeding before the court, that the consumer product presents an unreasonable risk of injury, and that failure of the Commission to initiate a rulemaking proceeding under section 7 or 8 unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court shall order the Commission to initiate the action requested by the petitioner.[1]

Petitions under the CPSA which request action other than issuance, amendment, or revocation of consumer product safety rules do not fall within section 10 and therefore are not subject to the 120-day rule (examples of such petitions include requests for the issuance of regulations governing the notification to the Commission of information regarding "new consumer products" under section 13 of the act or requests for the issuance of regulations with respect to conflicts of interest by members of the Commission).

Consideration of petitions under section 10 involves a very extensive process within the Commission. Engineers, biomedical scientists, economists, lawyers, epidemiologists, and other professionals on the staff analyze petitions and, based on a review of this staff analysis, the Commission decides whether to grant or deny the petition. Because the effort involved with petitions is extensive, the Commission believes it appropriate to take reasonable steps to ensure that it treats as petitions only those documents which can fairly be considered to be petitions, yet not discourage petitioning by imposing overly technical requirements.

The Commission receives thousands of communications every year. Many of these are intended to warn of product safety problems encountered by the writer or caller, others make suggestions and many simply ask for information. In considering the application of this policy to these communications, the Commission believes that a fair and reasonable approach is to consider as petitions only those written documents which contain the following information:

1. Facts, such as personal experience; medical, engineering or injury data; or a research study, which it is claimed establish that a consumer product safety rule (a standard or a ban) or an amendment or revocation thereof is necessary; and

2. An explicit request to initiate the suggested rulemaking, including a brief

[1] Although the act does not expressly so provide, it is assumed that the court's findings would be different if the petition requests revocation or modification so as to make the rule less stringent.

description of the substance of the consumer product safety rule, or amendment or revocation of the rule, which the petitioner seeks.

Communications received by the Commission that are not considered to be petitions are evaluated even though they are not processed in the same manner as petitions. For example, letters of complaint or reports of injuries may lead to a "substantial product hazard" action under section 15 of the CPSA to require the manufacturer, distributor, or retailer to inform the public of a hazardous product and/or repair, replace or refund the purchase price of the product. Should a complaint about a product lead the Commission to conclude that the product presents an imminent and unreasonable risk of death, serious illness, or severe personal injury, the Commission has the authority under section 12 of the CPSA to file an action in the appropriate United States district court to declare the product to be an "imminent hazard" and have it removed from the marketplace.

In deciding whether to treat a document as a petition, the Commission will consider the substance and not the form of the document. The fact that a document clearly details a safety problem and requests a specific Commission rule and yet does not contain the word "petition" will not cause the Commission to refuse to consider it as a petition.

CONCLUSION AND PROPOSAL

The Commission concludes that guidance is needed immediately for the preparation and processing of petitions under section 10 of the CPSA. The continued absence of procedural rules could lead to confusion and unnecessary expenditure of resources by everyone involved. Accordingly, these rules, effective September 29, 1976, shall serve as interim rules to govern the submission and processing of section 10 petitions.

Because these rules are rules of agency practice and procedure the Administrative Procedure Act requirements for notice of proposed rulemaking, opportunity for public participation and delayed effective date are not applicable. Even if the rules were to be considered general rulemaking, the Commission for good cause finds that such notice and public procedure and a delayed effective date are impracticable and not in the public interest because guidance is needed immediately to avoid confusion or unnecessary expenditure of resources.

However, the Commission believes that the public should be afforded the opportunity to comment upon these interim rules. Accordingly, these rules will be published in the proposed rules section of the FEDERAL REGISTER to facilitate and encourage public comment.[1] The public should be assured that any and all comments received upon these rules will be carefully considered by the Commission in its decision as to what form the final rules for section 10 petitions should take. Active and enlightened public comment on rules such as these is the major vehicle by which the Commission is informed of the public's beliefs and desires as to how this agency should discharge its statutory duties.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (sec. 10, Pub. L. 92-573, 86 Stat. 1217; 15 U.S.C. 2059), the Commission establishes as interim rules and proposes the following new Part 1110 of Title 16, Chapter II, Subchapter B:

Sec.

AUTHORITY: Sec. 10, Pub. L. 92-573, 86 Stat. 1217; 15 U.S.C. 2059.

§ 1110.1 Policy considerations.

(a) Among the most important activities carried out by the Consumer Product Safety Commission (CPSC) is the issuance of consumer product safety rules (standards or bans), under sections 7, 8, and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2056-2058).

(b) To most effectively carry out its mission with respect to the establishment of effective and sound consumer product safety rules, the Commission must have the interest and involvement of the public to the fullest possible extent.

(c) One of the most effective ways to involve the public in the establishment of consumer product safety rules is through the public's right to petition the Commission for such rules. Accordingly, prompt attention and thorough consideration should be given by the Commission to all documents that purport to be petitions.

(d) In deciding whether a document is a petition under section 10 of the act, the Commission will be concerned more with the substance than the form of the document. For example, the fact that a document clearly details a safety problem and requests a specific consumer product safety rule and yet is not labeled as a "petition" shall not in itself lead the Commission to refuse to consider it as a petition. On the other hand, the Commission will not treat a communication as a petition unless it appears the party responsible for the communication expresses an intent that it be so regarded.

§ 1110.2 Scope.

(a) This part establishes procedures for the submission and disposition of petitions for the issuance, amendment or revocation of a consumer product safety rule filed under section 10 of the Consumer Product Safety Act (15 U.S.C. 2059).

(b) Requests for the consideration of rulemaking matters under the Consumer Product Safety Act which do not involve consumer product safety rules are not required to comply with these procedures (for example, requests for issuance of interpretative rules, or changes in CPSC rules of procedure, or practice). However, persons filing such requests are encouraged to follow as closely as possible the requirements and recommendations for filing petitions under section 10 of the CPSA as set forth in § 1110.7. In considering petitions under the CPSA that do not involve issuance, amendment, or revocation of consumer product safety rules, the Commission shall not be obligated to comply with the requirements for petitions set forth in section 10 of the act.

(c) Petitions regarding products regulated under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 et seq.), the Flammable Fabrics Act (FFA) (15 U.S.C. 1191 et seq.), the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471 et seq.), and the Refrigerator Safety Act (15 U.S.C. 1211, et seq.) are governed by the Administrative Procedure Act (5 U.S.C. 553(e)) and, where applicable, existing Commission procedures at 16 CFR 1607.14, 16 CFR 1500.82, 16 CFR 1500.201, and 21 CFR 2.65. Persons filing such petitions, however, are encouraged to follow as closely as possible the requirements and recommendations for filing petitions under section 10 of the CPSA as set forth in § 1110.7.

§ 1110.3 Definitions.

For the purposes of this Part

(a) "Act" or "CPSA" means the Consumer Product Safety Act (15 U.S.C. 2051 et seq.), as amended by Pub. L. 94-284 (May 11, 1976).

(b) "Commission" means the Consumer Product Safety Commission, established by section 4 of the Consumer Product Safety Act (15 U.S.C. 2053).

(c) "Consumer product" means a product as defined in section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)).

(d) "Consumer product safety rule" means (1) a consumer product safety standard described in section 7(a) of the act or (2) a rule under section 8 of the act declaring a consumer product a banned hazardous product.

(e) "Consumer product safety standard", means a standard under section 7 (a) of the CPSA consisting of one or more of the following types of requirements: (1) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product, or (2) requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions or requirements respecting the form of warnings or instructions. A standard is issued by the Commission pursuant to the procedures set out in sections 7 and 9 of the act and regulations issued under those sections of the act (16 CFR Part 1105; 16 CFR Part 1109).

[1] EDITORIAL NOTE: Since these interim rules are effective on September 29, 1976, they are published in the rules section of this issue.

(f) "Banned hazardous product" means a consumer product which has been declared by the Commission by rule in accordance with sections 8 and 9 of the act to be a banned hazardous product on the basis of a finding that the product will be distributed in commerce and that it presents an unreasonable risk of injury for which no feasible consumer product safety standard under the CPSA would adequately protect the public.

(g) "Petition" under section 10 of the act means a written document which requests the issuance, amendment, or revocation of a consumer product safety rule and which complies with the provisions of § 1110.7(a).

§ 1110.4 General.

Any person, including a consumer or consumer organization, may file with the Commission a petition requesting the Commission to commence a proceeding for the issuance, amendment or revocation of a consumer product safety rule (i.e., a consumer product safety standard or a rule declaring a consumer product to be a banned hazardous product).

§ 1110.5 Place of filing.

A petition filed under this part should be mailed to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Persons wishing to file a petition in person may do so in the Office of the Secretary.

§ 1110.6 Time of filing.

For purposes of computing time periods under this part, a petition shall be considered filed when time-date stamped by the Office of the Secretary. A document is time-date stamped when it is received in the Office of the Secretary.

§ 1110.7 Requirements and recommendations for petitions.

(a) *Requirements.* To be considered a petition under this part, any request for the issuance, amendment or revocation of a consumer product safety rule must meet the requirements of this paragraph (a). A petition filed under this part shall:

(1) Be written in the English language;

(2) Contain the name and address of the petitioner;

(3) Indicate the consumer product (or products) regulated under the Consumer Product Safety Act for which a consumer product safety rule is sought or for which there is an existing consumer product safety rule sought to be modified or revoked;

(4) Set forth facts which establish the claim that the issuance, amendment, or revocation of a consumer product safety rule is necessary (for example, such facts may include personal experience; medical, engineering or injury data; or a research study); and

(5) Contain an explicit request to initiate Commission rulemaking and set forth a brief description of the substance of the proposed consumer product safety rule or amendment or revocation thereof which it is claimed should be issued by the Commission. (A general request for regulatory action which does not reasonably specify the type of action requested shall not be sufficient for purposes of this part.)

(b) *Recommendations.* The Commission encourages the submission of as much information as possible related to the petition. Thus, to assist the Commission in its evaluation of a petition, to the extent the information is known and available to the petitioner, the petitioner is encouraged to supply the following information or any other information relating to the petition. The petition will be considered by the Commission even if the petitioner is unable to supply the information recommended in this paragraph (b). However to the extent possible, the petitioner is encouraged to:

(1) Describe the specific risk(s) of injury to which the petition is addressed, including the degree (severity) and the nature of the risk(s) of injury associated with the consumer product and possible reasons for the existence of the risk of injury (for example, product defect, poor design, faulty workmanship, or intentional or unintentional misuse);

(2) State why a consumer product safety standard would not be feasible if the petitioner requests the issuance of a rule declaring the product to be a banned hazardous product; and

(3) Supply or reference any known documentation, engineering studies, technical studies, reports of injury, medical findings, legal analyses, economic analyses and environmental impact analyses relating to the petition.

(c) *Procedural recommendations.* The following are procedural recommendations to help the Commission in its consideration of petitions. The Commission requests but does not require, that a petition filed under this part:

(1) Be typewritten,

(2) Include the word "petition" in a heading preceding the text,

(3) Specify that it is brought under section 10 of the CPSA,

(4) Include the telephone number of the petitioner, and

(5) Be accompanied by at least five (5) copies of the petition.

§ 1110.8 Documents not considered petitions under section 10 of the CPSA.

(a) A document filed with the Commission which addresses a topic or involves a product outside the jurisdiction of the Commission will not be considered to be a petition. After consultation with the Office of the General Counsel, the Office of the Secretary will forward to the appropriate agency documents which address products or topics within the jurisdiction of other agencies. The Office of the Secretary shall notify the sender of the document that it has been forwarded to the appropriate agency.

(b) A petition filed under the Consumer Product Safety Act which addresses a risk of injury associated with a product which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be considered by the Commission under those acts. However, if the Commission finds by rule, in accordance with section 30(d) of the CPSA, as amended by Pub. L. 94-284, that it is in the public interest to regulate such risk of injury under the CPSA, it may do so. Upon determination by the Office of the General Counsel that a petition should be considered under one of these acts rather than the CPSA, the Office of the Secretary shall docket and process the petition under the appropriate act and inform the petitioner of this determination. Such docketing, however, shall not preclude the Commission from proceeding to regulate the product under the CPSA at some future time after making the necessary findings.

(c) Any other documents filed with the Office of the Secretary that are determined by the Office of the General Counsel not to be petitions under section 10 of the CPSA shall be evaluated for possible staff action. The Office of the Secretary shall notify the writer of the manner in which the Commission staff is treating the document. If the writer has indicated an intention to petition the Commission, the writer shall be informed by the Office of the Secretary of the procedure to be followed for petitioning.

§ 1110.9 Statement in support of or in opposition to petitions; Duty of petitioners to remain apprised of developments regarding petitions.

(a) Any person may file a statement with the Office of the Secretary in support of or in opposition to a petition prior to Commission action on the petition. Persons submitting statements in opposition to a petition are encouraged to provide copies of such statements to the petitioner.

(b) It is the duty of the petitioner, or any person submitting a statement in support of or in opposition to a petition, to keep himself or herself apprised of developments regarding the petition. Information regarding the status of petitions is available from the Office of the Secretary of the Commission.

(c) The Office of the Secretary shall send to the petitioner a copy of the staff briefing package on his or her petition at the same time the package is transmitted to the Commissioners for decision.

§ 1110.10 Public hearings on petitions.

(a) Under section 10(c) of the act the Commission may hold a public hearing or may conduct such investigation or proceeding, including a public meeting, as it deems appropriate to determine whether a petition should be granted.

(b) If the Commission decides that a public hearing or meeting on a petition, or any portion thereof, would contribute to its determination of whether to grant or deny the petition, it may issue a public notice of a hearing or meeting on the petition and invite interested persons to submit their views through an oral or written presentation or both. All such proceedings will be conducted in accordance with the Commission's Policy on Meetings: Advance Public Notice, Public Attendance, and Recordkeeping (16 CFR

Part 1012). The hearings or meetings shall be informal, nonadversary, legislative-type proceedings.

§ 1110.11 Factors the Commission considers in granting or denying petitions.

(a) The major factors the Commission considers in deciding whether to grant or deny a petition under section 10 include the following items:

(1) Whether the consumer product involved presents an unreasonable risk of injury.

(2) Whether a consumer product safety rule is reasonably necessary to eliminate or reduce the risk of injury.

(3) Whether failure of the Commission to initiate the rulemaking proceeding requested would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product.

(4) Whether, in the case of a petition to declare a consumer product a "banned hazardous product" under section 8 of the act, the product is being or will be distributed in commerce and whether a feasible consumer product safety standard would adequately protect the public from the unreasonable risk of injury associated with such product.

(b) In considering these factors, the Commission will treat as an important component of each one the relative priority of the risk of injury associated with the product about which the petition has been filed and the Commission's resources available for rulemaking activities with respect to that risk of injury. The CPSC Policy on Establishing Priorities for Commission Action, 16 CFR 1009.8, published July 8, 1976 (41 FR 27960) sets forth the criteria upon which Commission priorities are based. These criteria, briefly summarized, with respect to petitions under this policy, are as follows:

(1) Frequency and severity of injuries associated with a consumer product.

(2) Causality of injuries.

(3) Potential for a consumer product to cause chronic illness and injuries which do not become evident until some time after use of exposure to the product.

(4) Potential impact of Commission regulatory action in terms of possible reduction of injuries and increased cost to both producers and consumers, as well as potential effect on the usefulness and availability of the product.

(5) Nature of the risk of injury in terms of its forseeability by the consumer.

(6) Special vulnerability of children, elderly, and handicapped consumers to the risk of injury presented.

(7) Probability of injury to the consumer taking into consideration such things as the number of units in use, frequency of use, and likelihood of exposure to the identified risk of injury during typical use.

(8) Any additional criteria which would lead the Commission to treat a petition as high priority matter.

§ 1110.12 Granting of petitions.

(a) Section 10(d) of the act provides that within 120 days after the filing of a petition under section 10 of the act, the Commission shall either grant or deny the petition. The Commission may also grant a petition in part or deny it in part. If the Commission grants a petition, it shall promptly commence proceedings for the issuance, amendment or revocation of a consumer product safety standard under the appropriate provisions of sections 7, 8, or 9 of the act.

(b) The granting of a petition requesting a consumer product safety rule and the commencing of a proceeding does not necessarily mean that the rule requested will be issued. If the Commission grants a petition and commences a proceeding for a consumer product safety rule under section 7 or 8 of the CPSA, it may subsequently find it necessary to withdraw the proceeding pursuant to section 7(f) or section 9(a)(1)(B) of the act. A decision as to the issuance, amendment, or revocation of a rule must be made on the basis of all available information developed in the course of the rulemaking proceeding, including information obtained during the period for comment provided under section 9 of the CPSA (15 U.S.C. 2058). Should later information indicate that the action is unwarranted or not necessary, the Commission may terminate the proceeding.

§ 1110.13 Denial of petitions.

(a) If the Commission denies a petition brought under section 10 of the CPSA, it shall publish in the FEDERAL REGISTER its reasons for such denial.

(b) The denial of a petition shall be without prejudice to the petitioner to refile if the petitioner can demonstrate that new or changed circumstances or additional information justify reconsideration by the Commission.

(c) A Commission denial of a petition shall not preclude the Commission from continuing to consider matters raised in the petition.

Interested persons are invited to submit on or before December 28, 1976, written comments regarding this document. Comments received after this date will be considered to the extent practicable.

Comments should be submitted, preferably in 5 copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be seen in the Office of the Secretary, Washington, D.C. during working hours Monday through Friday.

Dated: September 24, 1976.

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

[FR Doc.76-28486 Filed 9-28-76;8:45 am]