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federal register

TUESDAY, DECEMBER 21, 1976

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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
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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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rules and regulations

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

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

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Revocation of Exceptions

Section 213.3301b is temporarily amended to show that until May 1, 1977, each Schedule C position at grade GS–15 and below in the executive branch is revoked when the position has been vacant for 120 calendar days or more and cannot be extended. (After May 1, 1977, the Commission will revert back to the limitation of 60 calendar days.)

Effective on December 21, 1976, §§ 213.3301b (a) and (b) are amended as set forth below:

§ 213.3301b Revocation of exceptions.

(a) Until May 1, 1977, the exception from the competitive service for each position at GS–15 and below in the executive branch listed in Schedule C is revoked when the position has been vacant for 120 calendar days or more. After May 1, 1977, the Commission will revert to the automatic revocation provisions which provide that a Schedule C position is revoked when vacant 60 calendar days or more.

(b) Until May 1, 1977, the Commission will not delay the revocation action for an additional period of time. After May 1, 1977, the Commission will revert to the provisions for extending Schedule C positions for an additional 60 calendar days.

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

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

[FR Doc.76–37207 Filed 12–20–76;8:45 am]

Title 7—Agriculture

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 & 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, & 55) TOBACCO

Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results; Marketing Quota Referendum Results; Corrections

In FR Docket 76–10240 appearing on page 15023 in the issue for Friday, April 9, 1976, in the second column under "Basis and Purpose" in the third paragraph "§ 724.27" should be "§ 724.24". In the center-head beginning the third column "§ 724.27" should be "§ 724.24".

Effective date: December 21, 1976.

Signed at Washington, D.C. on December 10, 1976.

SEELEY G. LODWICK,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.76–37224 Filed 12–20–76;8:45 am]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Lending Prohibition; Expansion of Exemption

Section 339.2 of the Federal Deposit Insurance Corporation's (the Corporation's) rules and regulations (12 CFR 339.2) implements section 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(b)). On August 3, 1976, section 202(b) of the Flood Disaster Protection Act was amended by Pub. L. 94–375 to expand the exemption to the lending prohibition contained in the section. In order to conform the Corporation's rules and regulations to the provisions of this amendment, § 339.2 of the Corporation's rules and regulations is hereby revised to read as follows:

§ 339.2 Prohibition as to loans in nonparticipating communities.

On and after July 1, 1975, or on and after one year following the date of official notification to the chief executive officer of a community [2] by the Secretary of Housing and Urban Development that the community is one containing special flood hazard areas, whichever is later, no insured State nonmember bank shall make, increase, extend or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, unless the community in which such area is situated is then participating [3] in the national flood insurance program. *Provided*, That the prohibition contained in this section shall not apply to: (a) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling; (b) any loan, which does not exceed an amount prescribed by the Secretary, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976; (c) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976; or (d) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm.

Since the amendment relates solely to a change necessitated by Pub. L. 94–375, the provisions of section 553 of Title 5, United States Code (5 U.S.C. 553) and Part 302 of the rules and regulations of the Corporation (12 CFR § 302), which pertain to notice, public participation, and deferred effective date, were not followed in connection herewith.

Effective Date: This amendment is effective on December 21, 1976.

(Sec. 202, Pub. L. 93–234, 87 Stat. 982 (42 U.S.C. 4106); sec. 14, Pub. L 94–375, 90 Stat. 1075 (42 U.S.C 4106))

By order of the Board of Directors, December 16, 1976.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

EMERGENCY HOUSING

Sec. 13. (a) Section 109(b) of the Emergency Homeowners' Relief Act is amended by striking out "June 30, 1976" and inserting in lieu thereof "September 30, 1977".

(b) The first sentence of section 110(a) of such Act is amended—

(1) by striking out "Until one year from the date of enactment of this title, each" and inserting in lieu thereof "Each";

(2) by inserting "prior to October 1, 1977," immediately after "(1)"; and

---

[2] For the purposes of this Part 339, a community is a State or a political subdivision thereof which has building code jurisdiction over a particular area having special flood hazards.

[3] For the purposes of this Part 339, a community participating in the national flood insurance program is a community which has complied with the requirements for participation as set forth in § 1909.22 of the regulations of the Federal Insurance Administration of the Department of Housing and Urban Development (24 CFR § 1909.22) and in which flood insurance is currently being sold.

(3) by inserting "until one year from the date of enactment of this title," immediately after "(2)".

(c) Section 111 of such Act is amended by striking out "July 1, 1976" and inserting in lieu thereof "October 1, 1977".

(d) Section 3(b) of the Emergency Home Purchase Assistance Act of 1974 is amended by striking out "July 1, 1976" and inserting in lieu thereof "October 1, 1977".

(e)(1) Section 313(b) of the National Housing Act is amended by striking out the period at the end thereof and inserting in lieu thereof "; and", and by inserting the following at the end thereof:

"(D) such mortgage involves a principal residence the sales price of which does not exceed $48,000 ($52,000 in high-cost areas as determined by the Secretary) per family residence or dwelling unit, except that such sales price in Alaska, Hawaii, and Guam may not exceed $65,000.".

(2) The amendment made by paragraph (1) shall apply only with respect to mortgages purchased pursuant to commitments made after the date of the enactment of this Act.

FLOOD INSURANCE

Sec. 14. (a) Section 202(b) of the Flood Disaster Protection Act of 1973 is amended by striking out all that follows "shall not apply to" and inserting in lieu thereof the following: "(1) any loan made to finance the acquisition of a residential dwelling occupied as a residence prior to March 1, 1976, or one year following identification of the area within which such dwelling is located as an area containing special flood hazards, whichever is later, or made to extend, renew, or increase the financing or refinancing in connection with such a dwelling, (2) any loan, which does not exceed an amount prescribed by the Secretary, to finance the acquisition of a building or structure completed and occupied by a small business concern, as defined by the Secretary, prior to January 1, 1976, (3) any loan or loans, which in the aggregate do not exceed $5,000, to finance improvements to or rehabilitation of a building or structure occupied as a residence prior to January 1, 1976, or (4) any loan or loans, which in the aggregate do not exceed an amount prescribed by the Secretary, to finance nonresidential additions or improvements to be used solely for agricultural purposes on a farm.".

(b) Section 1336(a) of the National Flood Insurance Act of 1968 is amended by striking out "December 31, 1976" and inserting in lieu thereof "September 30, 1977".

(c) Section 1376 of the National Flood Insurance Act of 1968 is amended by adding at the end thereof the following new subsection:

"(c) There are authorized to be appropriated for studies under this title not to exceed $100,000,000 for the fiscal year 1977.".

[FR Doc.76-37471 Filed 12-20-76;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Revision 6, Amdt. 12]

PART 120—BUSINESS LOAN POLICY

Amendment of "Media" Policy

On page 23731 of the FEDERAL REGISTER of June 11, 1976, SBA published a proposal to amend, for the purpose of clarification, the regulation setting forth its policy of denying financial assistance to enterprises engaged in the creation, origination, expression, dissemination, propagation, or distribution of ideas, values, thoughts, opinions or similar intellectual property.

On the basis of information admitted in response to its request for public comment, SBA has concluded that the exception to the above mentioned policy, in favor of certain cable TV operations, (set forth in § 120.2(d)(4)(v)) is excessively narrow; and that financial assistance could be extended to Cable TV operations having the capacity for program origination in conformity with the purpose underlying § 120.2(d)(4), provided the cable TV operation agrees to function only as a passive and contemporaneous retransmitter of programs originating elsewhere and the Federal Communications Commission agrees that the operator will not be required, so long as SBA financial assistance is outstanding, to make its facilities available for any other use. Proposed § 120.2(d)(4)(v) has accordingly been changed.

To the extent that the proposed regulation is changed, the change is less restrictive than the language it replaces, and will benefit a class of small business concerns heretofore ineligible for SBA financial assistance; and since no submissions have been received favoring retention or narrowing of the existing exception, it is not necessary to invite public comment prior to its adoption.

Except as stated, the proposed regulation is adopted without change, as set forth below, effective December 21, 1976.

MITCHELL P. KOBELINSKI,
Administrator.

(72 Stat. 337, as amended, 15 U.S.C. 636, sec. 5, 72 Stat. 385, 15 U.S.C. 634.)

§ 120.2 Business Loans and Guarantees.

Basic principles governing the granting and denial of applications for financial assistance:

* * * * *

(d) Financial assistance will not be granted by SBA:

* * * * *

(4) If the applicant is engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form, or content. Financial assistance to such applicants is barred in order to avoid Government interference, or the appearance thereof, with the constitutionally protected freedoms of speech and press. *Provided, however,* That nothing herein shall preclude finance to any otherwise eligible applicant engaged in one or more of the following activities:

(i) Printing: A firm solely engaged in commercial or job printing, if there is no common ownership with any concern ineligible under this subparagraph (4) and the printer has no direct financial interest in the commercial success of the material so produced.

(ii) Publishing, etc.: Publishers of shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative or filler material. All other publishers, including so-called "vanity" publishers, as well as producers, importers, exporters or distributors of communications, including newspapers, magazines, books, greeting cards, sheet music, pictures, posters, film, tape, live broadcasts, recordings or reproductions of sight, sound or musical programs or products, or theatrical productions, are ineligible. For an exception to the foregoing rule, see paragraph (d)(v) of this section.

(iii) Advertising and technical material: Firms producing advertisements and promotional material for a client's goods or services, or of technical or instructional material relating to such goods or services.

(iv) Reproduction: Firms providing motion picture, videotape, sound recording or theatrical technical production facilities, or the technical reproduction of motion picture, videotape or sound recordings without editorial or artistic participation therein, without a direct interest in the commercial success of material so produced, and without common ownership between the concern providing such services and the concern interested in such success.

(v) Cable TV: Cable TV operations only where operators are solely engaged in the passive and contemporaneous retransmission of programs originating elsewhere even though such operator may have the capacity to originate live or taped programs as required by other Federal regulations. A Cable TV operation required by the Federal Communications Commission to maintain a public access channel is eligible to receive SBA financial assistance provided it first (1) obtains a waiver from the Federal Communications Commission of the requirement that the access channel be available to the public so long as SBA financial assistance is outstanding; and (2) agrees that so long as SBA financial assistance is outstanding, it will limit its operations to the passive and contemporaneous retransmission of programs originating elsewhere, without any use of its program origination capacity.

(vi) Education: Vocational, technical and other nonacademic schools which do not also teach academic subjects; and nursery and pregrade schools if they are not primarily engaged in teaching academic subjects.

(vii) Distributors of books, etc. General merchandise stores also selling books, newspapers, magazines, records, etc., and general book or music (record) stores. Specialty stores primarily selling products that promote or advocate ideas, including ideological, political or philosophical viewpoints, and specialized delivery, distribution or transportation concerns limited to the distribution of ineligible material (such as books, newspapers, etc.), are ineligible.

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

[FR Doc.76-37455 Filed 12-20-76;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 76N-0475]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

REGULATORY HEARINGS

The Food and Drug Administration (FDA) is amending its delegations of authority regulation relating to holding hearings and appointing review boards by adding a new delegation; effective December 21, 1976.

This new delegation is being added as a result of promulgation of new FDA procedural regulations for regulatory hearings published in the FEDERAL REGISTER of November 2, 1976 (41 FR 48262). The new delegation will encompass all regulatory hearings held by the agency, including informal hearings, under sections 304 as amended (21 U.S.C. 334) and 514, 515, 516, 518, and 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360d, 360e, 360f, 360h and 360j) as added by the Medical Device Amendments of 1976.

Further redelegation of the authority delegated by this amendment is not authorized. Authority redelegated by this amendment to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him as "acting," or unless it is not legally permissible.

An official delegated the authority to serve as the presiding officer may serve in that capacity in a particular hearing only if his service would not conflict with § 2.505(b) of Subpart F. Thus, he may be the presiding officer only if he is not biased or prejudiced and has not participated in the investigation or action. If he is disqualified under § 2.505(b), he may designate another official who meets the requirements of § 2.505(b) to be the presiding officer.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) 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)), § 5.21 is amended by adding new § 5.21(d) to read as follows:

§ 5.21 Delegations regarding hearings and review boards.

* * * * *

(d) The Directors and Deputy Directors of Bureaus, Regional Food and Drug Directors, and District Directors are authorized to serve as the presiding officer, and to designate other Food and Drug Administration employees to serve as the presiding officer, at a regulatory hearing and to conduct such a hearing pursuant to the provisions of Subpart F of Part 2 of this chapter. An official can serve as the presiding officer in a particular hearing only if he satisfies the requirements of Paragraph (b) of § 2.505 with respect to the action that is the subject of the hearing. Such officials are delegated authority vested in the Secretary of Agriculture by 7 U.S.C. 2217 (43 Stat. 803) to administer or to take from any person an oath, affirmation, or deposition for use in any prosecution or proceeding under, or in enforcement of, any law as cited in this part.

Effective date: This amendment shall be effective December 21, 1976.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: December 14, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-37216 Filed 12-20-76;8:45 am]

[Docket No. 76C-0427]

PART 8—COLOR ADDITIVES

Listing of D&C Green No. 8 for Use in Externally Applied Drugs and Cosmetics; Correction

In FR Doc. 76-33995 appearing at page 51006 in the FEDERAL REGISTER of Friday, November 19, 1976, paragraphs (a)(1) and (b) of § 8.4072 are corrected to read as follows:

§ 8.4072 D&C Green No. 8.

(a) *Identity.* (1) The color additive D&C Green No. 8 is principally the trisodium salt of 8-hydroxy-1,3,6-pyrenetrisulfonic acid.

* * * * *

(b) *Specifications.* D&C Green No. 8 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practices:

Volatile matter (at 135° C), not more than 15 percent.
Water-insoluble matter, not more than 0.2 percent.
Chlorides and sulfates (calculated as sodium salt), not more than 20 percent.
The trisodium salt of 1,3,6-pyrenetrisulfonic acid, not more than 6 percent.
The tetrasodium salt of 1,3,6,8-pyrenetetrasulfonic acid, not more than 1 percent.
Pyrene, not more than 0.2 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 65 percent.

* * * * *

Dated: December 15, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc76-37387 Filed 12-20-76;8:45 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

[Docket No. 76F-0023]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SLIMICIDES

The Food and Drug Administration is amending the food additive regulations to provide for safe use of 1,2-benzisothiazolin-3-one as a component of slimicides in the manufacture of paper and paperboard that contact food; effective December 21, 1976; objections by January 21, 1977.

Notice was given by publication in the FEDERAL REGISTER of February 10, 1976 (41 FR 5862), that a food additive petition (FAP 3H2927) had been filed by ICI United States, Inc., Wilmington, DE 19897, proposing that § 121.2505 *Slimicides* (21 CFR 121.2505) be amended to provide for the safe use of 1,2-benzisothiazolin-3-one as a slimicide in the manufacture of paper and paperboard that contact food.

The Commissioner of Food and Drugs, having evaluated the data in the food additive petition and other relevant material, concludes that § 121.2505 should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976, (41 FR 24262)), § 121.2505 (c) is amended by alphabetically adding a new item in the list of substances as follows:

§ 121.2505 Slimicides.

* * * * *

(c) * * *

List of substances:	*Limitations*
* * *	* * *
1,2-benzisothiazolin-3-one ----------	At a level of 0.06 pound per ton of dry weight fiber.
* * *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 21, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all

documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This amendment is effective December 21, 1976.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: December 15, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-37386 Filed 12-20-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7448]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Temporary Regulations Relating to Nonbank Trustees of Pension and Profit-sharing Trusts Benefiting Owner-Employees

This document amends § 11.401(d)(1)–1 of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 (26 CFR Part 11), relating to nonbank trustees of pension and profit-sharing trusts benefiting owner-employees.

Section 401(d)(1) of the Internal Revenue Code permits a person which is not a bank to be the trustee of a qualified pension or profit-sharing trust benefitting owner-employees if such person demonstrates to the satisfaction of the Commissioner that such person will administer the trust in a manner consistent with the requirements of section 401. Such a demonstration must be made by filing a written application.

Under § 11.401(d)(1)–1, the applicant is generally required to demonstrate its ability to act within the accepted rules of fiduciary conduct, experience and competence with respect to accounting for the interests of a large number of individuals, and familiarity with other activities normally associated with the handling of retirement funds. Thus, the applicant must be prepared to comply with specified rules of fiduciary conduct. In addition, it must possess such attributes as continuity, permanent location, financial reponsibility, and fiduciary experience.

Section 11.401(d)(1)–1(g)(3) contains a special rule that applies to certain credit unions, savings and loan associations and similar financial institutions. This special rule was designed to expedite the approval of well-qualified credit unions and other financial institutions. However, it has not had the desired effect. Therefore, the special rule is now revised.

As revised, the special rule provides that an applicant will be approved to act as the trustee of qualified pension and profit-sharing trusts benefiting owner-employees ("Keogh Plans") if three requirements are satisfied:

(1) The applicant must be a credit union, industrial loan company, or savings and loan association. (Other financial institutions may be designated later by the Commissioner.)

(2) The trust assets must be invested solely in deposits in the applicant.

(3) Deposits in the applicant must be insured (up to the dollar limit prescribed by applicable law) by an agency or instrumentality of the United States or a State.

Credit unions and other financial institutions that satisfy the revised special rule will be automatically approved on December 22, 1976. They will then be permitted to act as the trustee of Keogh Plans and individual retirement accounts and as the custodian of custodial accounts described in section 401(f) of the Internal Revenue Code. They will not be required to submit a written application. However, this automatic approval does not apply to a financial institution that fails to satisfy any one of the three requirements set out above.

ADOPTION OF REGULATIONS

To provide new rules for approving credit unions and other financial institutions to act as trustees of qualified pension and profit-sharing trusts benefiting owner-employees, the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 are amended as follows:

Section 11.401(d)(1)–1(g)(3) is revised to read as follows:

§ 11.401(d)(1)–1 Nonbank trustees of trusts benefiting owner-employees.

* * * * *

(g) *Special rules.* * * *

(3) *Savings account.* (i) An applicant will be approved to act as trustee under this subparagraph if the following requirements are satisfied:

(A) The applicant is a credit union, industrial loan company, savings and loan association, or other financial institution designated by the Commissioner;

(B) The investment of the trust assets will be solely in deposits in the applicant;

(C) Deposits in the applicant are insured (up to the dollar limit prescribed by applicable law) by an agency or instrumentality of the United States or a State.

(ii) Any applicant who satisfies the requirements of this subparagraph is hereby approved, and (notwithstanding paragraph (b) of this section) is not required to submit a written application. This approval takes effect on the first day after December 22, 1976, on which the applicant satisfies the requirements of this subparagraph, and continues in effect for so long as the applicant continues to satisfy those requirements.

* * * * *

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found to be impracticable to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 401(d)(1) and 7805 of the Internal Revenue Code of 1954 (88 Stat. 939 and 68A Stat. 917; 26 U.S.C. 401 and 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 16, 1976.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.76-37613 Filed 12-17-76;4:58 pm]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS

Amendment of Chapter Heading

Under the authority of section 505 of the Employee Retirement Income Security Act of 1974 ("the Act"), Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135), and Secretary's Order No. 13-76 (May 17, 1976), 29 CFR Chapter XXV is amended as follows:

The chapter heading of Chapter XXV is changed to read "CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS."

By Secretary's Order No. 13-76 the Secretary of Labor cancelled Secretary's Order No. 27-74, and, with certain exceptions, delegated authority and assigned responsibilities for carrying out the programs and related activities to be performed by the Secretary of Labor under the Act to the Administrator of Pension and Welfare Benefit Programs. The amendment of the heading of 29 CFR Chapter XXV reflects the new delegation.

It is the general policy of the Department of Labor to allow time for interested parties to take part in the rulemaking process. This amendment, however, is entirely administrative in nature. The public rulemaking process, therefore, is waived and this amendment is effective on December 21, 1976.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs.

DECEMBER 14, 1976.

[FR Doc.76-37469 Filed 12-20-76;8:45 am]

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

Reporting and Disclosure Requirements; Correction

In FR Doc. 76-11859 appearing at page 16957 in the FEDERAL REGISTER of April 23, 1976, paragraph (c)(4)(ii) of § 2520.-104-5 on page 16962 is corrected to read as follows:

§ 2520.104–5 Deferral of certain reporting and disclosure requirements relating to the summary plan description for welfare funds.

* * * * *

(c) * * *

(4) * * *

(ii) The provisions of sections 104(a)(1)(D) and 104(b)(1) of the Act that require filing with the Secretary and furnishing to participants and beneficiaries receiving benefits a summary description of material modifications to the plan and changes in information required to be included in the summary plan description except that no summary description is required to be furnished for material modifications and changes in the information required to be included in the summary plan description if any such modification or change has been incorporated in the initial summary plan description furnished on or before March 31, 1977.

Issued in Washington, D.C., this 9th day of December 1976.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.76-37470 Filed 12-20-76;8:45 am]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

PART 737—NAVAL PROCUREMENT DIRECTIVES, 1974 EDITION

Miscellaneous Amendments

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 2202, 2301–2314, 32 CFR § 1–108, and Secretary of the Navy Instruction 4200.29, the Chief of Naval Material, in accordance with the policies and directions of the Assistant Secretary of the Navy (Installations and Logistics), amends 32 CFR Part 737. Part 737 is a codification of the Navy Procurement Directives, 1974 Edition (NAVMAT P–4202), which implement within the Department of the Navy the provisions of the Armed Service Procurement Regulations (32 CFR, Subchapter A).

The Navy Procurement Directives have since been revised by revisions No. 3 of December 20, 1974; No. 4 of April 15, 1975; and No. 5 of July 30, 1976. The amendments to Part 737, which are nonoriginative in nature, reflect these revisions and relate entirely to internal naval management practices and policies. It has been determined that invitation of public comment on these changes prior to adoption would be unnecessary and is therefore not required under the public rule-making provisions in Parts 296 and 701 of 32 CFR.

32 CFR Part 737 is therefore amended as follows:

1. § 737.1–101 is revised as follows:

§ 737.1–101 Purpose of Navy Procurement Directives (NPD).

The Navy Procurement Directive (NPD) (NAVMAT P–4202) is published by the Chief of Naval Material in accordance with the policies and direction of the Assistant Secretary of the Navy (Installations and Logistics) pursuant to the authority contained in SECNAVINST 4200.29 of August 3, 1973. In accordance with § 1–108 of this title, it serves to (a) Supplement the ASPR (Armed Services Procurement Regulations) [Subchapter A (Parts 1 through 33) of this title 32] and other Department of Defense publications concerned with procurement, and to (b) promulgate at the departmental level policies and procedures concerned primarily with procurement which are not covered by ASPR or other DOD publications.

§ 737.105–2 [Amended]

2. In § 737.105–2, fifth and sixth lines, the words "Chief of Naval Operations and the Commandant of the Marine Corps" are changed to "Chief of Naval Operations, the Chief of Naval Research, and the Commandant of the Marine Corps."

§ 737.108 [Amended]

3. In paragraph (d) of § 737.108, 12th and 13th lines, the words "the Navy Stock List of Publications and Forms, section 12," are changed to "the microfiche edition of NAVSUP Publication 2002, Navy Stock List of Publications and Forms, Section III, under Stock Numbers beginning with 0528."

4. Section 737.1–111–50 is revised as follows:

§ 737.1–111–50 Fraud in connection with procurement and property disposal.

(a) Where management is alert to its responsibilities in maintaining appropriate safeguards against the commission of fraud in the procurement and disposal of government property, it can more effectively protect the government property, it can more effectively protect the government against the type of fraudulent actions described in SECNAVINST 4385.1 series.

(b) Heads of procuring activities (§ 1–201.14 of this title) shall assure that the procedures set forth below to assure integrity in procurement operations and disposal of government property are followed by activities reporting to them:

(1) Perform periodic, selective reviews of procurement and property disposal operations and related areas to determine that an adequate system of checks and balances has been provided. Reviews shall include, but not be limited to, such areas as determination of requirements, preparation and adoption of procurement specifications and standards, qualification approval, solicitation and evaluation of bids and proposals, cost/price analysis and negotiations, award of contract, ordering under open-end procurements, contract administration, contract termination, receipt control, administration of payments, transportation, inventory control and sale and disposal of government property.

(2) Conduct frequent spot-checks to determine:

(i) compliance with existing safeguards by all military and civilian personnel, and

(ii) the need for possible modification of existing procedures as a result of changed conditions.

(3) Assure that all personnel fully understand the distinctions that have been drawn between proper and improper modes of conduct as defined in SECNAVINST 5370.2 series (Part 721 of this title). Provide opportunities for meaningful discussion, placing special emphasis on conflict of interest matters and the issues involved.

(4) Identify for special management attention those positions requiring continued, close association with the contractor or his representatives and involving duties or decisions which strongly affect the contractor's interest.

(5) Consider adherence to high standards of integrity in selecting personnel for promotion and in making assignments to key positions.

(6) Take prompt administrative steps or assist appropriate authorities in criminal or civil actions against military and civilian personnel involved in fraudulent activities. Similarly, provide necessary assistance and information in reply to inquiries concerning suspected wrongdoing or abuse of authority. In this regard, forthright cooperation with the Federal Bureau of Investigation and the Naval Investigative Services is essential.

5. Paragraph (c)(8) of § 737.1–201 is revised as follows:

§ 737.1–201 Definitions.

* * * * *

(c) * * *

(8) "Administrative Contracting Officer (ACO)," insofar as Navy field contract administration offices are concerned, is the commanding officer or officer-in-charge who is currently a contracting officer (§ 1.202.3 of this title). The term also includes any authorized representative of the commanding officer or officer-in-charge acting within the limits of his contracting officer authority.

6. Section 737.1–363 is revised as follows:

§ 737.1–363 Participation by contract administration officers in RFP preparation evaluation of proposals and source selection.

(a) When feasible, contract administration offices shall be requested to review, prior to completion of drafting, the RFP (Request for Proposal), Schedule, General Provisions, Specifications, or other provisions of proposed major weapon systems contracts for the purpose of planning for contract administration and for determining the adequacy of such contractual requirements for contract administration purposes. In addition, contract administration offices may be requested to participate in the technical evaluation of proposals and in source selection, in order to provide guidance to the purchasing activity on contract administration matters and on the ability of the contractor to perform the type of work contemplated. Contract administration offices may also be requested to participate in negotiation. Such participation is in addition to field pricing support provided the PCO (Procuring Con-

tracting Officer) as required by § 3–801 of this Title 32.

(b) The selection of one or more contract administration offices to participate in procurement document preparation, evaluation of proposals and source selection, should be based on the familiarity of their personnel with the kind of weapon system to be procured and/or the likelihood of award to a contractor under their cognizance. Contract administration offices may be requested to participate similarly in procurements for items other than weapon systems when considered necessary by the procuring activity, purchasing office, project manager or requiring activity.

§ 737.1–401–55 [Amended]

7. Paragraph (c) (2) of § 737.1–401–55 is revised as follows:

* * * * *

(c) * * *

(2) *Formal and constructive changes.* (i) In those cases where Navy actions (or inactions) alleged by the contractor, after appropriate evaluation, constitute a change, the Contracting Officer should promptly formalize such constructive change(s) in writing, irrespective of whether the contract contains the "Notification of Changes" clause, § 7–104.86 of this title. Negotiation and settlement of such changes should be handled in the normal fashion—i.e., in accordance with § 1–406(c) (ix) of this title and the contract's provisions. The procedures outlined in paragraph (c) (2) (iii) of this section are for use on an exception basis where the contractor has not presented a full disclosure of pertinent facts or a timely determination of Navy responsibility is not feasible.

(ii) With respect to those formal written changes as to which the contractor alleges a factual or other interrelationship with a claim, activities should exert every effort to equitably adjust such changes coupled with allowance for any disruption or delay impact determined to be appropriate by the procuring agency.

(iii) In exceptional cases where disruption, delay or other claimed impacts are known to exist and cannot be currently resolved, the procuring activity may proceed with equitable adjustments covering the inter-related formal changes coupled with usage of qualified release. The qualified release should specifically identify the inter-relationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and demonstrate support for a separate equitable adjustment therefor under the contract.

8. In paragraph (c) (4) (v) of § 737.2–401–55, eighth line, the words "hereby depose and say that: (i) the facts" are changed to "hereby depose and say that, to the best of my knowledge and belief: (i) the facts * * *."

9. In paragraph (e) (3) (i) of § 737.1–401–55, after the fifth line and before the sixth line, the following phrase is added: "and the Deputy Chief of Staff for Installations and Logistics, Headquarters, Marine Corps."

10. In paragraph (e) (3) (iii) of § 737.1–401–55, lines ten to fifteen, the following sentence is deleted: "In the event such review cannot be completed within ten (10) working days, the NMC Claims Board shall notify the NMC General Board of the reasons for the delay and the anticipated date of completion of review."

Further, in paragraph (e) (3) (iii), lines 29 through 34 are deleted and the following is substituted therefor: "Board designated executive shall fully brief his SYSCOM Commander and the Deputy Chief of Staff, Headquarters, U.S. Marine Corps, as appropriate, on each proposed claim settlement or final decision prior to NMC General Board action. To facilitate the above-mentioned briefings, the SYSCOM and MARCORPS Claims Board * * *."

11. A new section, § 737.1–401–58 is added to Part 737 after § 737.1–401–57 and before § 737.1–403, and it provides as follows:

§ 737.1–401–58 Assignment of purchase actions by systems commands to field activities within the Navy Field Procurement Systems (NFPS).

(a) *Definition.* The Navy Field Procurement System (NFPS) consists of those field activities of the Department of the Navy, including offices and branch offices, which make purchases under the delegated authority of the Commander, Naval Supply Systems Command NAVSUP Publication 467, "Field Purchasing," identifies those field activities within the NFPS with delegated procurement authority in excess of $250.

(b) *Authority to assign purchase actions.* In obtaining the material and services required for the performance of its assigned mission, each of the systems commands within the Naval Material Command is authorized to request other activities to carry out requisite purchase functions. This authority should not be used for the purpose of assigning to field activities within the NFPS purchase actions that should properly be handled at the Systems Command Headquarters level, e.g., where the contracts directorate of the command may have available capacity or may be in the process of making related purchases.

(c) *Considerations.* The following considerations shall be taken into account in assigning purchase actions:

(1) That the purchase organization at each field activity of the Naval Air, Sea, and Electronic Systems Command has been established to support the research, production, or other technical mission of the particular field activity;

(2) That the central area buying activities of the NFPS are responsible for providing purchase support to the naval activities located in the given area served;

(3) That the Naval Regional Procurement Offices (NRPOs) and Naval Supply Centers assigned regional procurement functions furnish overall procurement and procurement management support for the geographic area served; and

(4) That the activities in paragraphs (c) (2) and (3) of this section, in that order, are responsible for making those purchases which are in excess of either the purchase authority or capability of the activities of the NFPS located within the geographic regions served.

(d) *Procedures.* To establish uniform and more effective methods of assigning purchase actions and task or work orders involving procurement generated by the systems commands named in paragraph (c) (1) of this section, the following procedures shall be followed:

(1) Purchase actions, including purchase requests, purchase requisitions, Military Interdepartmental Purchase Requests (DD Form 448), task/work orders involving procurement, and other procurement requirements originated at the Systems Command Headquarters level, shall be reviewed by the contracts directorate. The review shall be conducted to assure the retention by the command of requirements which, because of high dollar value, complexity, or other considerations warrant purchase action at the headquarters level.

(2) The Naval Supply Systems Command (Deputy Commander, Procurement Management) shall be advised in writing at the time a decision is made by a systems command to assign to Navy field purchasing activities new procurement actions that will require business clearances in excess of $1,000,000 or the responsibility for ASPR 3–406, 3–409, or 3–410 type contracts (§§ 3–406, 3–409, and 3–410 of this title) whose total cumulative value is expected to exceed $1,000,000.

(3) When a field purchasing activity receives a purchase action which originated from a systems command and has reason to believe that procurement should be effected at the systems command level, the field activity shall coordinate the matter with the Naval Supply Systems Command (Deputy Commander, Procurement Management) before proceeding with the procurement.

§ 737.1–403–51 [Amended]

12. In paragraph (b) (1) (iv) of § 737.1–403–51, sixth and seventh lines, the words "and the Naval Regional Procurement Office, Los Angeles: 2,000,000" are changed to "the Naval Regional Procurement Office, Long Beach, and the Naval Regional Procurement Office, Philadelphia: $2,000,000."

13. Paragraph (b) (2) (viii) (A) of § 737.1–403–51 is revised to provide as follows:

(A) For the Naval Air Systems Command, Naval Electronic Systems Command, Naval Sea Systems Command: $2,000,000."

14. Paragraph (b) (2) of § 737.1–403–51 is amended by adding a paragraph (b) (2) (xvii) after paragraph (b) (2) (xvi), which provides as follows:

(xvii) *Nonpersonal services contracts.* See § 737.22–102.

§ 737.1–403–53 [Amended]

15. In paragraph (b) (1) of § 737.1–403–53, lines 19 and 20, the symbol "SH–

SR(s)–SS" is changed to "SEA"; after line 28 which says, "Office, Naples_____ _____ NAP," add the following:

"Naval Regional Procurement Office, Philadelphia, Newport Division_____	NPT
Naval Supply Center, Puget Sound, Bremerton_____	NSC, BR
Naval Air Station, Patuxent River, MD_____	PAX";

in lines 72, 73, and 74, delete the following:

"Naval Ordnance Laboratory, White Oaks, Silver Spring, MD _____	NOL"

and substitute:

"Naval Surface Weapons Center, White Oak Laboratory, White Oak, Silver Spring, MD_____	WOL";

and, in lines 98 and 99 delete the following:

"Naval Weapons Laboratory, Dahlgren, VA_____	DL"

and substitute:

"Naval Surface Weapons Center, Dahlgren Laboratory, Dahlgren, VA_____	DL."

16. Part 737 is amended by adding §§ 737.1–406–51 and 737.1–406–52 after § 737.1–406–50, which provide as follows:

§ 737.1–406–51 Negotiating complex requests or claims for equitable adjustments pursuant to contract clauses.

Circumstances may arise where a contractor's assertions involve difficult or complex legal, factual, or fiscal issues requiring extensive fact-finding and analysis of government liability. Examples include late or defective government furnished property or information, complex delay and disruption issues under formal change orders, and formal suspensions of work or stop work orders. In such circumstances, the request or claim for equitable adjustment shall be subject to the requirements of § 737.1–401–55 applicable to claims.

§ 737.1–406–52 Contractor employee compensation and insurance/pension reviews.

(a) NAVPROs (Naval Plant Representative Offices) and SUPSHIPs (Supervisors of Shipbuilding, Conversion and Repair) are responsible for determining the final allowability of contractor costs, including costs for contractor employee compensation, insurance, and pensions. As part of the effort necessary to make determinations applicable to employee compensation, insurance, and pensions costs, NAVPROs/SUPSHIPs may use the services of the cognizant DCASR (Defense Contract Administration Service Region) to conduct the reviews required by § 1–406(c) (1) and (2) of this title.

(b) Reviews conducted by DCAS shall be conducted in accordance with DCAS regulations. NAVPRO/SUPSHIP personnel may serve on DCAS/DCAA review teams. Such reviews will not duplicate review areas covered by reviews made by NAVPROs/SUPSHIPs, or by the Navy Material Command Insurance Examiner, unless specifically requested.

(c) DCAS reports of compensation and insurance/pension reviews shall be distributed only to the NAVPRO or SUPSHIP, and the cognizant DCAA auditor, except for copies used by DCAS for internal use. Action on recommendations in reports is the prerogative of the NAVPRO or SUPSHIP served. A copy of each report shall be provided the cognizant systems command and the Chief of Naval Material by the NAVPRO or SUPSHIP.

(d) Requests for DCAS services should be confirmed in writing to Defense Contract Administration Services, DCAS–AF, Room 8A489, Cameron Station, Alexandria, VA 22314. A copy should be sent to the Chief of Naval Material (MAT 024), Washington, DC 20360 and higher headquarters of the NAVPRO/SUPSHIP.

(e) When the services of the DCASR are used, the Navy will pay for the cost of travel and per diem, and, subject to prior approval of the Navy, for costs of the services of an independent actuary.

17. Section 737.1–407 is amended by adding a paragraph (j) which provides as follows:

§ 737.1–407 Functions of Defense Contract Audit Agency (DCAA) offices.

* * * * *

(j) Defense Contract Audit Manual (DCAAM 7640.1), also referred to as "CAM" includes the policies, procedures, standards and techniques governing Defense Contract Audit Agency personnel in the execution of the contract audit mission. This manual and revisions are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The cost is $27.75 for an indefinite subscription which will include the manual and future revisions.

§ 737.1–702–50 [Amended]

18. In paragraph (b) of § 737.1–702–50, lines 19, 20, and 21, the following is deleted:

Naval Ship Systems Command, Department of the Navy, Washington, D.C. 20360.

§ 737.1–950 [Deleted]

19. Section 737.1–950, *Navy Contractor Experience List*, is deleted.

20. Paragraph (b) (1) of § 737.1–1004 is amended by adding paragraphs (b) (1) (iii) and (b) (1) (iv), which provide as follows:

§ 737.1–1004 Announcement of contracts valued at $1,000,000 or more.

* * * * *

(b) * * *

(1) * * *

(iii) That the proposed announcement has been coordinated with appropriate offices of the Chief of Naval Operations (OPNAV), the Commandant of the Marine Corps, as appropriate, cognizant program managers or sponsors to insure the accuracy of the wording and data to be released; and

(iv) The OPNAV codes or other identifications of the persons with whom the staffing was conducted.

§ 737.1–1007 [Amended]

21. Section 737.1–1007 [Amended] Paragraph (b) of § 737.1–1007, which provides "A copy of each release shall be forwarded to the Chief of Naval Material (MAT 02E)" is deleted.

22. Paragraph (a) of § 737.1–2100–2 is amended by adding paragraph (a) (6), which provide as follows:

§ 737.1–2100–2 Applicability.

(a) * * *

(6) Foreign Military Sales (FMS) requirements where the FMS requirement is:

(i) to be included under a contract for Navy requirements for the same or similar item, or

(ii) under a separate FMS contract and where the period of performance thereunder either overlaps or is consecutive with performance under a Navy contract for the same or similar items. The ASPR threshold for APP preparation shall be applicable to the combined estimate of the Navy/FMS requirements. At a minimum, the APP must include sufficient information to clearly show, by text and milestone chart, the FMS requirement's impact on the Navy's requirements in the areas of contractor performance, cost and delivery.

§ 737.3–201–50 [Amended]

23. In paragraph (a) of § 737.3–201–50, lines 14 and 15, the following words are deleted: "For disaster areas see § 737.1–850."

§ 737.3–210–3 [Amended]

24. In paragraph (e) 4., lines 58 and 59, the name "Ling-Temco-Vought" is changed to "Vought Corporation;" in lines 64, 65, 66, and 67, the words "This Class Determination and Findings shall be effective from date of execution through "[insert expiration date]" are changed to "This Class Determination and Findings shall be effective for one (1) year from the effective date of the Basic Ordering Agreement, and shall apply to all orders issued during the effective period unless such authorization is suspended or cancelled by the purchasing office;" lines 68 through 74 are deleted; and, line 76, the number "(xxvi)" is deleted.

* * * * *

25. A paragraph (d) is added to § 737.3–3217–2, after line 15, which provide as follows:

§ 737.3–217–2 Applicability.

(d) contracts awarded to the Small Business Administration in accordance with Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

§ 737.3–306–52 [Amended]

26. In paragraph (b) of § 737.3–306–52, in lines 11, 12, and 13, delete the following words, "See § 737.3–306–56 for sample format of RAN's for exceptions (11) through (16)."

27. In paragraph (d)(2) of § 737.3–206–52, line 6, the word "Assistant" is changed to "Assistant Deputy Chief of Staff."

28. Paragraph (c) of § 737.3–306–53 is revised as follows:

§ 737.2–306–53 Class Determinations and Findings (CDF's).

* * * * *

(c) *Delegation of authority to make certain CDFs.* With respect to Basic Ordering Agreements (BOAs) for the overhaul, repair or modification of existing equipment under Exemption (10) (10 U.S.C. 2304(a)(10) and § 3–210 of this title) (See § 737.3–410–2), the authority to make CDFs is delegated to the Commanders, Naval Air, Electronics, Sea and Supply Systems Commands with a power of redelegation to a level no lower than the Director of a purchasing office as defined in § 1.201–24 of this title.

(1) *Limitations.* This authority shall be, in every case, subject to the following express limitations:

(i) Such CDFs shall only support the overhaul, repair or modification of equipment or weapon systems to be procured on a selected or specified source (sole source) basis through orders placed under BOAs;

(ii) They shall be limited to the overhaul, repair, or modification of existing equipment or systems;

(iii) They shall exclude the performance of any research and development effort;

(iv) They shall exclude the procurement of any parts, components or materials not an integral part of the work to be performed.

(v) They shall specifically list the items or equipment upon which the work will be performed, together with the proposed sources for such work;

year; and shall include a statement identifying the specific expiration date.

(2) *Format.* The suggested format incorporating the conditions listed in (1) above is illustrated in § 737.3–210–3.

(3) *Preparation and submission.* (i) ARAN and the CDF shall be prepared in the same manner as they would be for submission to the Assistant Secretary of the Navy (I&L).

(ii) Each such CDF shall be numbered consecutively by the activity.

(iii) One copy of each such CDF, together with the associated RAN, shall be forwarded to the Chief of Naval Material (MAT 023) promptly after execution.

* * * * *

29. Paragraph (b) of § 737.3–408 is revised as follows:

§ 737.3–408 Letter contracts.

* * * * *

(b) *Reporting Letter Contract Status.* See § 737.21–103–1.

30. Section 737.3–410–2 is revised as follows:

§ 737.3–410–2 Basic ordering agreement.

(a) *General.* (1) Basic Ordering Agreements (BOAs) are normally written to provide for the procurement of authorized supplies and services covering as wide a range as is practicable. However, separate BOAs may be negotiated when it is considered necessary to restrict the use of a BOA to the procurement of specific supplies or services or when it is considered necessary to authorize the Contract Administration Office (CAO) to issue orders. Such BOAs are referred to as specialized BOAs.

(2) Specialized BOAs providing for the placement of orders by the CAO shall contain a provision substantially as follows:

Each order issued hereunder shall cite (insert applicable negotiation authority and class determination and findings (CDF) number), unless earlier suspended or cancelled by notice from the purchasing office. Orders for items not identified in the CDF and basic ordering agreement are considered unauthorized.

(3) The requirement of § 3–410.2(c)(2)(i) of this title for a determination at the time each order is placed that it is impracticable to obtain competition is satisfied when there is a selected or specified source (sole source) CDF.

(4) The Basic Ordering Agreement shall provide a time frame for the furnishing of contractor price quotations for unpriced orders issued. The period should be as short as practicable, usually 30 days, and normally should not exceed 60 days from receipt of the order. When the Contracting Officer, upon notification by the contractor that pricing cannot be established within the specified period, determines that a longer period is necessary, he shall document the contract file indicating the basis for the determination.

§ 737.3–507–50 [Amended]

31. In § 737.3–507–50, second line, the sum "$2,500" is changed to "$10,000."

32. New §§ 737.3–805, 737.3–805–1, and 737.3–805–2 are added to Part 737 after § 737.3–803 and before § 737.3–807, and they provide as follows:

§ 737.3–805 Written and oral discussions.

§ 737.3–805–1 General.

This part provides guidance for the conduct of technical discussions and price negotiations in negotiated procurements.

§ 737.3–805–2 Competitive negotiation.

(a) *Background.* Unrealistically priced contracts have caused budgetary and contract performance problems; underpriced contracts inevitably lead to either (1) disruption of other programs in order to provide the necessary funding, or (2) reduction within the program of efforts needed to ensure an optimal product. These result in widespread present and future cost excesses which are intolerable in an era of increasingly austere budgets. Therefore, it is necessary to ensure that negotiations are conducted in a manner that promotes realism.

(b) *Applicability.* The provisions of this part are applicable to cost type, research and development, and other complex contracts where factors other than price serve as the primary basis for award. In less complex contracts where price is the predominant basis for award, the two-step negotiation procedures described in § 3–805.2 of this title regarding price negotiation will be followed to avoid unnecessary repetition and loss of credibility through the improper use of best and final offers.

(c) *Action.* Contract negotiations will be conducted in accordance with the following:

(1) Technical discussions are intended to ensure that the provisions of the solicitation are clearly understood by offerors and that the government evaluators fully understand the proposals and their strengths and weaknesses in order to adequately discriminate for purposes of source selection. Accordingly, those aspects of proposals which are unclear, improperly substantiated or fail to meet the requirements of the solicitation must be discussed with offerors. All offerors selected for discussions must be afforded adequate opportunity to meet the requirements of the solicitation. However, the strengths, weaknesses, or overall evaluation of any offeror's proposal with respect to the other proposals must not be divulged either directly or indirectly. The conduct of discussions must avoid leveling proposals to the point where the technical discrimination necessary for source selection is destroyed and cost, however, weighted, assumes disproportionate importance. This requires the exercise of sound judgment based upon such factors as the degree of effective competition and the selection criteria given the solicitation.

(2) During the conduct of price negotiations, the need for realism should continually be stressed to offerors. The solicitation criteria and the evaluation of cost proposals should emphasize realism and the proper substantiation of proposed costs. This can be accomplished best by comparison with independent government cost estimates. Offerors must be afforded the opportunity, following discussions, to submit revisions to their proposals. However, to ensure the realism of initial proposals and to avoid the need for successive rounds of best and final offers, offerors should continually be advised that changes to initial proposals made in adjusted offers will be evaluated against the realism criteria and appropriate justification in terms of the discussions and negotiations which have transpired. Under no circumstances will a best and final offer be solicited for purposes of driving offerors to an unreasonably low price or for the sole purpose of attempting to lower an otherwise reasonable price.

(3) The planning and conduct of source selections and negotiations must stress the need for the necessary security to ensure that cost proposals and/or the standings of offerors with respect to cost are not divulged to any person beyond those whose duties require that knowledge. The proper control of negotiations and the achievement of realistic initial cost proposals require that unauthorized disclosures be precluded.

§ 737.3–807–53 [Amended]

33. In § 737.3–807–53, second through fifth lines, the words "data on DD Form 1107 (Change Order Price Analysis) or DD Form 784 (Cost Analysis for Contract Price Redetermination)," are changed to "data on DD Form 633–5 (Contract Pricing Proposal (Change Orders)) or DD Form 633–6 (Contract Pricing Proposed (Price Redetermination))."

34. Part 737 is amended by deleting the following sections:

§ 737.3–1000 [Deleted]

§ 737.3–1000–1 [Deleted]

§ 737.3–1004 [Deleted]

§ 737.3–1005 [Deleted]

§ 737.3–1006 [Deleted]

§ 737.3–1007 [Deleted]

§ 737.3–1008 [Deleted]

§ 737.3–1050 [Deleted]

§ 737.3–1051 [Deleted]

§ 737.3–1100 [Deleted]

§ 737.3–1100–1 [Deleted]

§ 737.3–1100–2 [Deleted]

35. Section 737.6–103–2 is revised as follows:

§ 737.6–103–2 Nonavailability in the United States.

(a) Each request for approval to purchase a foreign end product as provided in § 6–103.2(d)(4) shall be submitted to the Chief of Material (MAT 02) in the form of a determination. The determination shall include:

(1) A reference to the Buy American Act (41 U.S.C. 10a–d);

(2) Identification of the contracting activity;

(3) Identification of contractor;

(4) Description of item being procured;

(5) The unit and quantity;

(6) The unit price and estimated delivery cost of the foreign end product;

(7) The unit price and estimated delivery cost of the unavailable domestic end product;

(8) A brief statement indicating the earliest practicable date the domestic end item can be made available, if not immediately available to meet requirements;

(9) Location of project (for construction only);

(10) A brief statement establishing the necessity for the procurement and indicating considerations which have been given to the feasibility of foregoing the requirement;

(11) A statement establishing the nonavailability of any similar or substitute domestic end items, indicating both the required characteristics available only in the foreign end item and the deficiencies of the domestic items; and

(12) A statement describing the relationship of the requirement to the production of any item on the Master Urgency Planning List.

§ 737.6–103–5 [Amended]

36. In § 737.6–103–5, after line 52, (Group/Class No. 39), add

"4010---------- Chain and Wire Rope,"

in lines 106 through 109, delete the following:

"7440---------- Automatic Data Processing Systems: Industrial, Scientific, and Office Types";

and add the following:

"70---------- General Purpose Automatic Data Processing Equipment."

37. Section 737.6–203–1 is revised as follows:

§ 737.6–203–1 Nonavailability in the United States.

Each request for approval to purchase a nondomestic construction material on the basis of "nonavailability" as provided in § 18–508.1(b)(1) of this title shall be submitted to the Chief of Material (MAT 02) in the manner, and subject to the requirements, prescribed in § 737.6–103–2.

38. Part 737 is amended by adding § 737.6–203–2, after § 737.6–203–1, which provides as follows:

§ 737.6–203–2 Evaluation of bids and proposals.

(a) Proposed awards requiring a determination in accordance with § 18–508.1 and § 18–508.2 of this title shall be submitted to the Chief of Naval Material (MAT 02) and shall contain the following information:

(1) Description of the materials, including unit and quantity;

(2) Estimated costs;

(3) Location of the construction project;

(4) Name and address of the proposed contractor; and

(5) Detailed justification of the impracticability of using domestic materials.

§§ 737.6–204 and 737.6–204–3 [Deleted]

39. Part 737 is amended by deleting §§ 737.6–204 and 737.6–204–3.

40. Part 737 is amended by adding § 737.6–706, after § 737.6–705–3, which provides as follows:

§ 737.6–706 Determination of contractor responsibility for the purpose of Foreign Military Sales (FMS) contracts.

(a) *Background.* Under the Foreign Military Sales Act, the United States may enter into contracts for the procurement of defense articles or defense services for sale to friendly foreign countries. In awarding contracts for FMS requirements, the United States, as in satisfying its own requirements, must assure itself that the contractor is responsible and has the wherewithal to meet its contractual commitment. There may be serious diplomatic and military consequences when a contractor fails to perform an FMS contract in accordance with its terms. In view of the importance of the timely delivery of a quality FMS item, within cost, the cognizant contracting officer must, in making a determination of responsibility under § 1–904 of this title, have every assurance that the contractor will in fact perform as he promises.

(b) *Action.* (1) Under § 1–903.3 of this title, special standards of responsibility may be developed when necessary to ensure adequate contract performance. The use of such standards, as may be appropriate, is encouraged with respect to FMS contracts. Any special criteria shall be set forth in the solicitation. In addition, the solicitation shall inform the offerors that due to the nature of the procurement all doubts as to responsibility shall be resolved against the offeror.

(2) When a Foreign Military Sales (FMS) contract requires that a product be obtained from a particular firm, the Navy procuring activities shall advise the foreign government of any contractor deficiencies that may adversely affect contract performance. In such event, a recommendation shall be made either to forego the requirement or provide a qualified United States contractor substitute.

41. Part 737 is amended by adding § 737.7–104–1, after § 737.7–104, which provides as follows:

§ 737.7–104–1 Equitable adjustments covering material and energy-related shortages.

(a) *Discussion.* The current material and energy-related shortage conditions introduce additional risk factors and contingencies into on-going current procurement negotiations. In order to eliminate or substantially reduce certain of these contingencies which are near-term in nature and which can be specifically identified as to type prior to contract award (or prior to definitization of contract prices), it will be necessary and prudent to provide protection covering such specific near-term contingency(s) in lieu of accepting contingencies in contract pricing therefor.

(b) *Policy.* The clause as prescribed in paragraph (c) of this section may be used in Navy fixed-price-type contracts (including both FFP and FPI). The contractor's certificate as to contract price contingencies shall be made part of the contract file. Use of the clause is also encouraged in contracts with small business concerns.

(c) *Clause.*

EQUITABLE ADJUSTMENT CLAUSE

(MATERIAL AND ENERGY-RELATED SHORTAGES)

a. The prices agreed to under this contract contain no provision for the certain specific contingencies specified in subparagraph b. below. The contractor represents that these contingent items represent near-term financial exposures under this contract for which provision was requested in contract prices negotiated under this contract. In lieu of such provision, the Contracting officer agrees that, in the event the specific contingencies

outlined in subparagraph b. below occur, the prices under this contract will be equitably adjusted.

b. The following specific contingencies are identified:

c. The contractor shall notify the Contracting Officer within thirty (30) days of the occurrence of the above contingencies. Such notice shall include (i) the Contractor's proposal for equitable adjustment in the contract prices and (ii) support data, demonstrating the actual occurrence of the identified contingencies in such form as the Contracting Officer may require.

d. The aggregate of the increases in the contract prices made under this clause shall not exceed $_____.

e. The price equitable adjustment shall not include material handling charges, overhead, general and administrative expenses, and profit.

42. Part 737 is amended by adding §§ 737.7–303 and 737.7–303–1 after § 737.7–300, and they provide as follows:

§ 737.7–303 Clauses to be used when applicable.

§ 737.7–303–1 Equitable adjustments covering material and energy-related shortages.

See § 737.7–104–1.

43. Part 737 is amended by adding §§ 737.7–601 and 737.7–601–1, after § 737.7–600, which provide as follows:

§ 737.7–601 Clauses to be used when applicable.

§ 737.7–601–1 Equitable adjustments covering material and energy-related shortages.

See § 737.7–104–1.

§ 737.7–602 [Amended]

44. The section heading in § 737.7–602 is changed from "Clause to be used when applicable" to "Civil Works," and after the fourth line and before the fifth the following is added:

CIVIL WORKS

DELEGATION TO NAVAL FACILITIES ENGINEERING COMMAND

45. Part 737 is amended by adding §§ 737.7–607 and 737.7–607–1 before § 737.7–800, which provides as follows:

§ 737.7–607 Clause to be used when applicable.

§ 737.7–607–1 Equitable adjustments covering material and energy-related shortages.

See § 737.7–104–1.

§ 737.7–802–5 [Amended]

46. In § 737.7–805–5, lines six and seven, the words "contracts § 3–405)" are changed to "contracts § 3–405 and other types of contracts § 3–406)."

47. Part 737 is amended by adding §§ 737.7–803 and 737.7–803–1 after § 737.7–802–5.

§ 737.7–803 Clause to be used when applicable.

§ 737.7–803–1 Equitable adjustments covering material and energy-related shortages.

See § 737.7–104–1.

§ 737.10–301–50 [Amended]

48. In paragraph (b) of § 737.10–301–50, in lines 17 and 26, the term "(MAT 0212H)" is changed to "(MAT 024N)."

49. Section 737.10–351 is revised as follows:

§ 737.10–351 Authority of the Insurance Examiner, Procurement and Production Management Division, Headquarters Naval Material Command.

(a) The Insurance Examiner (MAT 024N) shall formulate insurance, bonding and indemnification policies and procedures for application in Department of the Navy procurements and shall supervise their execution pursuant to such administrative instruction as may be issued by the Chief of Naval Material. The Insurance Examiner is designated as the duly authorized representative of the Chief of Naval Material for the performance of the functions described in paragraph (c) below.

(b) The Insurance Examiner is available to procurement activities to provide guidance on insurance, bonding and indemnification matters. His telephone number is 202–692–8657/8/9 (commercial) or 222–8657/8/9 (autovon).

(c) The Chief of Naval Material or his duly authorized representive, is authorized to act by direction of the Secretary of the Navy, or as the duly authorized representative of the Head of a Procuring Activity, the contracting officer, or any other naval official designated in such a contract:

(1) To require or approve insurance whenever a contract provides that a contractor shall procure such insurance as may be required or approved by the Department, by the Secretary of the Navy, the Head of a Procuring Activity, the contracting officer, or by any other official of the Department;

(2) To execute, sign or endorse in the name of and by direction of the Secretary of the Navy any and all (i) lost policy releases; (ii) proofs of loss; (iii) subrogation agreements; (iv) endorsements of policies for claims and/or return premiums; (v) payment orders; and (vi) insurance drafts made payable to the Secretary of the Navy and not affecting the obligating of appropriations; and

(3) To advise and recommend to the Secretary of the Navy or other authorized interested officials of the Navy Department regarding

(i) Insurance drafts affecting the obligating or appropriations; and

(ii) Assignment to assume payment of premiums found to be due after the completion of a contract.

§§ 737.10–501–50 and 737.10–552 [Amended]

50. The term "(MAT 0212H)" is changed to "(MAT 024N)" at the following places. § 737.10–501–50, lines 12–13; § 737.10–552, paragraph (a), line nine, paragraph (b), lines 12 and 25, and paragraph (e), lines three and four; § 737.10–700–1, paragraph (b), line three; and § 737.10–702, lines nine and ten.

51. Paragraph (a)(2) of § 737.16–812–51 is amended by adding the following after line three:

4. In the event the contractor obtains or receives any refund or rebate of, or credit for, taxes paid to the State of California or any political subdivision thereof, in connection with the performance of this contract, and for which the contractor was paid or reimbursed by the Government, the contractor agrees to pay over to the Government an amount equal to such refund or credit (including interest paid or credited to the contractor incident to such refund or credit to the extent that such interest was earned after the contractor was paid or reimbursed by the Government for such taxes). In the event the contractor receives any benefit in lieu of or in addition to such a refund or credit, the contractor agrees to pay over to the Government an amount equal to such benefit.

52. Paragraphs (a) (1) and (2) of § 737.17–208–1 are revised as follows:

§ 737.17–208–1 Investigations.

(a) * * *

(1) Obtain a formal advisory audit report from the cognizant Defense Contract Audit Agency (DCAA) Office;

(2) Clearly identify with audit request the areas which should be verified and any specific accounting information needed; a copy of the pertinent financial or cost data submitted by the contractor should accompany the request; and

* * * * *

53. Section 737.17–208–3 is revised as follows:

§ 737.17–208–3 Cases referred to the Navy Contract Adjustment Board.

Procuring activities shall provide the Navy Contract Adjustment Board with six (6) copies of any case referred to the Board for decision under the provisions of Public Law 85–804. In addition, one (1) copy shall be forwarded directly to the Director of Contract Financing (NCD–4), Office of the Comptroller General.

§ 737.17–208–5 [Amended]

54. In paragraph (b)(3) of § 737.17–208–5, line three, the numbers "(i), (ii), and (iii)" are changed to "(1), (2), and (3)," and in line five, the word "subparagraph (b)" is changed to "paragraph (a)".

§ 737.10–702–4 [Amended]

55. Section 737.20–702–4 is amended by adding a paragraph (c), which provide as follows:

§ 737.20–702–4 Project manager or procuring activity.

* * * * *

(c) The guidance in paragraphs (a) and (b) of this section is also applicable for use as appropriate with non-Navy CAO's.

56. Section 737.20–702–5 is revised as follows:

§ 737.20–702–5 Monitoring contractor's costs.

(a) *Introduction.* The complexities of weapons systems procurement require a high degree of competence in contract management. The objective is to assure that the items purchased by the Government are delivered on schedule for fair and reasonable prices. Because of the cost and technical risks involved, the administration of weapons systems contracts usually require more knowledge and surveillance of a contractor's operation than would be required under less critical contracts. In order to insure the most efficient and economical performance of major contracts, Naval Plant Representatives (NAVPROs) and Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPs) will monitor contractor direct and indirect costs related to Government business.

(b) *Responsibility for cost monitoring.* Within each NAVPRO and SUP SHIP administering contracts with contractors who are not CWAS qualified (§ 3–10 of this title), and who are expected to have sales to the Government in excess of $25,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts an individual or organizational element shall be designated as "cost monitor." The cost monitor shall be responsible to the Head of the NAVPRO/SUPSHIP for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for performing reviews of contractor operations from the coordinated long range plans established by each of the team members (see paragraph (c) of this section). The purpose of this composite plan and schedule is to assure that the cost monitoring responsibilities summarized in § 737.1–406–50 are being fully implemented, and that the technical and professional expertise of the various organizational units of the NAVPRO/SUPSHIP and the Defense Contract Audit Agency (DCAA) auditor are used without duplication of effort or skills;

(2) Coordinating the performance of the cost monitoring efforts of the NAV PRO/SUPSHIP;

(3) Coordinating the cost monitoring efforts of the NAVPRO/SUPSHIP with those of the DCAA auditor;

(4) Advising the Head of the NAV PRO/SUPSHIP of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs that will not be allowed if incurred;

(5) Coordinating NAVPRO/SUPSHIP actions to assure that the procuring contracting officer, project manager, the head of a procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of government contracts;

(6) Coordinating actions to assist NAVPRO/SUPSHIP, DCAA, and other government personnel in obtaining access to pertinent contractor policies, procedures, and related financial data, and obtaining the assistance of the Head of the NAVPRO/SUPSHIP when such access is being denied or impaired;

(7) Maintaining an inventory of NAVPRO/SUPSHIP, DCAA, and other government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concerning cost performance; and

(9) Maintaining current organizational charts of the contractor's operations compatible with the contractor's budgetary system.

The plan required by paragraph (b)(1) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of government/commercial work and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Reviews required by ASPR and the contracting officer must be included in the plan.

(c) *Contractor operations review.*— (1) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the next best alternative is to select for review those operations that have the greatest potential for charging government contracts with significant amounts of unacceptable costs such as those resulting from inefficient and uneconomical operations. To select these cost-risk areas on a sound and orderly basis, it is first necessary that an overview be obtained of the contractor's entire operation. Prior to the beginning of each government fiscal year, the NAVPRO/SUPSHIP cost monitor should arrange for a joint meeting between NAVPRO/SUPSHIP personnel, the DCAA auditor and other directly interested government representatives to coordinate selection of the areas to be subject to the review during the coming year. Documentation and other data to be obtained for use in the selection process will include:

(i) Contractor's total budget package broken down by functions for the coming year and latest survey of the budgetary system. (DCAA auditor responsibility.)

(ii) Detailed organizational charts for the contractor's entire operation. (NAVPRO/SUPSHIP responsibility.)

(iii) An outline of the contractor's accounting system to understand the flow of costs by function. (DCAA auditor responsibility.)

(iv) The extent of government participation in the dollars attributable to the operations and cost accounts under consideration. (DCAA auditor responsibility.)

(v) A complete list of recent reviews and audits performed by the NAVPRO/SUPSHIP, the DCAA auditor, and other government representatives that would impact upon the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (NAVPRO/SUPSHIP responsibility.)

(vi) Evidence of under and overstaffing. (NAVPRO/SUPSHIP—DCAA auditor responsibility.)

(vii) Significant departures from established productivity standards. (NAVPRO/SUPSHIP responsibility.)

(viii) Major financial variances from budgets in prior years. (DCAA auditor responsibility.)

(ix) Evidences of idle or underused capacity. (NAVPRO/SHIP DCAA auditor responsibility.)

(2) *Planning for reviews.* The purpose of the meeting described in paragraph (c)(1) of this section is to consider all of the data identified and develop a mutually acceptable annual plan for reviews of the contractor's operation. The plan shall provide coverage for each significant operational area of the contractor over a period of 2–3 years and shall be modified during subsequent meetings as necessary to reflect current conditions. The schedule and resource limitations of the participating organizations will be considered during preparation of the annual plan. The plan will identify the organizations having the primary responsibilities for performing the review, i.e.; the NAVPRO/SUPSHIP, DCAA, or jointly by NAVPRO/SUPSHIP and DCAA. When appropriate, the participating organizational units of the NAVPRO/SUPSHIP shall also be identified in the plan:

(i) Reviews of contractor operations involving minimal or no financial and accounting considerations will be performed by the NAVPRO/SUPSHIP and the NAVPRO/SUPSHIP will sign reports on these reviews.

(ii) Accounting and financial reviews of contractors' operations involving minimal or no technical considerations will be performed by the DCAA auditor, and the auditor will sign reports on these reviews.

(iii) Other reviews involving significant technical and financial/accounting aspects will be performed jointly by the NAVPRO/SUPSHIP and DCAA and the reports on these reviews will be signed by the heads of the respective organizations.

Some operations reviews such as the purchasing and estimating system reviews are assigned to the responsible reviewing organization by ASPR. These assignments will continue to be recognized. All others will be performed in accordance with the above criteria. The plan shall be formally approved by both the head of

the NAVPRO/SUPSHIP and the head of the local DCAA Resident Office.

(d) *Joint reviews.*—(1) *Objective.* The objectives of Joint NAVPRO/SUPSHIP DCAA auditor reviews of contractor operations are:

(i) To optimize the utilization of DCAA NAVPRO/SUPSHIP personnel in the performance of selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the NAVPRO/SUPSHIP to improve the effectiveness and economy of contractor operations.

(2) *DCAA auditor responsibility.* Organizationally, the DCAA is separate from, and independent of purchase and contract administration offices. DCAA auditors are professionals trained in accounting, auditing, and financial matters, DCAA functions and relationships are set forth in §§ 737.1–407 and 737.1–408. Briefly, DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting and financial advisory services regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. Section 3–801.5 of this title, Responsibility of Field Pricing Support Personnel, provides that the auditor is responsible for submission of information and advice based on his analysis of the contractor's books and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs. It also states that the auditor is responsible for performing that part of reviews and cost analysis which requires access to the contractor's books and financial records supporting proposed costs or pricing costs or pricing data regardless of the dollar amount involved. Finally, it provides that only the auditor shall have general access to the contractor's financial books and records for this purpose. The NAVPRO/SUPSHIP will utilize the auditor's services whenever such expertise is needed; particularly in regard to the contractor's financial management reports, books, and records. The auditor will be responsible for reviewing the financial and accounting aspects of the contractors' budgetary system.

(3) *Differences.* The finding, conclusions, and recommendations resulting from joint reviews shall be mutually agreed upon by the NAVPRO or SUPSHIP and the Resident Auditor. In those instances where Navy and DCAA field personnel are unable to resolve, among themselves, differences of opinion on significant joint report findings, conclusions, and recommendations, report copies with pertinent explanation shall be forwarded simultaneously to NAVMAT and DCAA Headquarters, via channels, for advice.

(4) *Exit conference with contractor.* During the course of the review there may be several information briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconception that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain NAVPRO/SUPSHIP and DCAA findings, conclusions, and recommendations.

(5) *Reports on joint reviews.* Reports on joint reviews of contractor's operations shall be prepared for submission to the contractor by the DCAA auditor and the NAVPRO or SUPSHIP and signed by the heads of both offices. Joint review reports shall be submitted to the contractor by an accompanying transmittal letter signed by the Head of the NAVPRO/SUPSHIP. To the maximum practical extent, the report will be prepared in the following format:

Cover page.
Table of contents.
Summary (see (A) below).
  Background of operational area reviewed.
  Purpose of review.
  Scope of review.
  Summary evaluation.
Statement of conditions and recommendations (see (B) below).
Status of corrective action taken regarding prior recommendations (see (C) below).
Concluding remarks (see (D)).
Exhibits and schedules (see (E) below).

(a) *Summary*—(i) *Background of operational area reviewed.* The background paragraph should provide information regarding the area under review. It should indicate the overall significance of the area and sion statement where appropriate, and any other background data which may impact the review, such as recent contractor reorganizations in the area being reviewed, major changes in operating procedures, major changes in volume or mix of business, major contract awards or terminations affecting the area, observations or disclosures from other reviews, and other similar background data as appropriate.

(ii) *Purpose of review.* The purpose paragraph will clearly identify the particular area reviewed, the purpose, and the period reviewed. This paragraph will also include the following restriction on report release: "This report may not be released to any Federal agency outside the Department of Defense without prior approval of the signatories except where an agency requests the report in connection with the negotiation or administration of a contract by the agency."

(iii) *Scope of review.* The scope paragraph should normally include a standard phrase such as the following: "The financial aspects of this joint review were performed in accordance with generally accepted auditing standards and included such tests of accounting records and other auditing procedures as were considered necessary in the circumstances. In addition, the scope of the technical review should also be stated. Where pertinent, the paragraph may also identify any relevant contractor records, documents, policies, and procedures examined, and special techniques used such as: statistical sampling, regression analysis, ration delay, etc. Any factors which restricted the scope of the review should also be clearly stated.

(iv) *Summary evaluation.* One of the principal objectives of the report is to adequately expose any significant adverse conditions found during the review to insure that necessary corrective action is taken. Accordingly, the summary evaluation should include a brief, pointed statement on the overall results of the evaluation. Specific favorable internal controls or contractor procedures should be recognized but particular emphasis should be placed on those conditions where improvement is needed. This paragraph should also include a brief summary of the effect (dollar or other) of the conditions and their underlying causes. The summary conclusions should relate to and be consistent to have, at the same time, a long list of significant deficiencies and an overall favorable conclusion. The summary evaluation should be presented in clear, concise, and specific terms so that the reader will not have to make arbitrary, possibly erroneous, deductions or assumptions, about the conclusions.

(B) *Statement of conditions and recommendations.* A comprehensive statement of conditions and recommendations for corrective action is required for each deficiency or weakness found and should be presented as follows:

TITLE OF SUBJECT/AREA TO BE DISCUSSED

(i) *Statement of condition.* The conditions found during the review should be clearly described. Specific examples of adverse conditions should be included. The scope of the examination and the result of any tests made should be described in sufficiently precise terms. Time periods of the tests should be highlighted if deficiencies are more prevalent during certain time frames. The criteria that the receiver used as a basis for comparison with the actual condition should be described sufficiently to permit the reader to grasp the significance of finding. The cause or the underlying reasons for the conditions should be explained as specifically as possible.

(ii) *Cost impact.* The effect of the adverse conditions on government contracts in terms of dollar amounts should be shown whenever possible. It is recognized that there may be times when dollar impacts are not discernible. When actual dollar amounts are not available, the reasons for such unavailability should be explained, and reasonable estimates should be used wherever possible. In brief, the report should indicate clearly and specifically what the reviewer considers the effect to be in the circumstances.

(iii) *Recommendations addressed to the contractor.* The recommendations should be a natural and logical fallout of the preceding paragraphs. Recommendations should be constructive in nature and as definitive as the situation warrants. The reviewer need not solve all procedural or functional problems but should indicate at least the framework for resolving the deficiency. It may be appropriate in certain complex situations to recommend that the contractor, with its resources, undertake a study directed toward remedying the deficiency.

(iv) *Contractor's reaction.* The contractor's reaction, as obtained during interim discussions or the exit conference (d)(4), should be noted as well as whether the contractor has agreed to undertake appropriate corrective measures. If the contractor is not prepared to furnish authoritative comments on the review findings at the time of the exit conference, it is considered appropriate to furnish a preliminary draft copy of the report to the contractor in order for him to fully understand the findings and recommendations. A reasonable timeframe (usually 2 weeks to 30 days) should be established for the contractor's reply. Reports should not be

held beyond the agreed-to deadline for receipt of the contractor's reaction.

(v) *Reviewer's rejoinder.* Any factual matters raised by the contractor's comments or reply should be included in the statement of condition. The extent to which the contractor concurs with the findings and recommendations and the contractors proposed action should also be discussed.

(C) *Status of corrective action taken on prior recommendations.* This paragraph should show the status of corrective action taken by the contractor on recommendations made in prior reports on the same functional area. The paragraph should include a determination by the reviewer as to whether the corrective action taken is adequate. If corrective action is inadequate or has not been taken, the recommendation should be restated or a reference made to the updated discussion of the matter in the present report.

(D) *Concluding remarks.* This paragraph should be used to suggest specific time periods for corrective action on any report recommendations or other comments as appropriate. The report should be signed at the end of the narrative section of the report by both the Head of the NAVPRO/SUPSHIP and the head of the local DCAA Resident Office.

(E) *Exhibits and schedules.* Reports should contain any exhibits and supporting schedules necessary for adequate support of the review findings and a clear understanding of the recommendations. The contractor's operating and financial statements and pertinent excerpts from the contractor's policies and procedures may be included as exhibits in those circumstances where they will contribute to an understanding of the report.

(e) *Reports issued by NAVPROS or SUPSHIPS.* Reports issued solely by the NAVPRO/SUPSHIP will be prepared generally in accordance with paragraph (d) (5) above except when regulations provide otherwise.

(f) *Recommendations to Government activities.* NAVPRO/SUPSHIP findings resulting in recommendations to named government activities will be the subject of a separate report signed by the Head of the NAVPRO/SUPSHIP and forwarded through channels to the activities addressed in the recommendation.

57. Part 737 is amended adding §§ 737.20–702–7 and 737.20–702–8, after § 737.20–702–6, which provide as follows:

§ 737.20–702–7 Review of contractor's ADP (Automatic Data Processing) operations.

(a) *NAVPRO/SUPSHIP responsibility.* Each NAVPRO (Naval Plant Representative Office) and SUPSHIP (Supervisor of Shipbuilding, Conversion and Repair) administering contracts with contractors expected to have sales to the Government in excess of $5,000,000 during the next 12 months on other than firm fixed-price and fixed-price with escalation contracts shall review the contractors ADP operations periodically to assure that they are effective and economical. This review should be combined with a review required by § 3–1100.2 of this title and shall include a review of the end products of contractors' ADP equipment, and the data that might be produced by such equipment. The plan and schedule for the review must be tailored to the contractor concerned, taking into account the requirements of § 3–1100 of this title, the extent of competition in contracts being performed, the contractor's operating methods, the nature of the work being done, procurement cycle states, types of contracts involved, degree of technical and financial risk, ration of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at a stage early enough to enable preventive action to be taken. Review teams shall be headed by a representative of the NAVPRO/SUPSHIP and shall include as necessary one or more ADPE specialists provided by the Systems Command, one or more DCAA auditors, and appropriate NAVPRO/SUPSHIP personnel.

(b) *NAVAIR/NAVSEA responsibility.* The Commander, Naval Air Systems Command (NAVAIR) and the Commander, Naval Sea Systems Command (NAVSEA) shall provide necessary technical assistance to NAVPROS and/or SUPSHIPS managed by them, to conduct the reviews required by paragraph (a) of this section as well as the review required by § 3–1100.2 of this title applicable to contractor acquisition of ADPE. NAVAIR or NAVSEA shall also provide necessary technical assistance required by § 3–1100.2(c) of this title to Defense Contract Administration Services activities cognizant of contractors having a preponderance of Navy unexpended contract dollars. The selection of NAVAIR or NAVSEA to provide this service will be determined on the basis of preponderance of unexpended NAVAIR or NAVSEA contract dollars in contracts held by the contractor.

§ 737.20–802–8 Responsibilities of NAVPROs and SUPSHIPs for deobligation of unexpended dollar balances considered excess to known contractor requirements.

(a) *Responsibility.* NAVPROs (Naval Plant Representative Office) and SUPSHIPS (Supervisors of Shipbuilding, Conversion and Repair) shall monitor contract funding in order to determine when excess funds are available for deobligation.

(b) *Procedures.* (1) Contractually required reports, including Contract Funds Status Report (DD Form 1556) and the report required by the Limitation of Cost clauses, shall be examined to determine if there are excess contract funds. Also, when work under a contract or contract line item is physically completed, or has lapsed, a review shall be made to determine if there are any excess funds.

(2) When the determination has been made that unexpended dollar balances are excess to known contract requirements, the NAVPRO/SUPSHIP shall obtain a statement from the contractor as to the exact amount available for deobligation.

(3) When authorized by § 737.26–102 or the purchasing office (see § 1–406(c)(lviii) of this title) the NAVPRO/SUPSHIP will execute a bilateral contract modification releasing excess funds. Otherwise the NAVPRO/SUPSHIP shall provide a report of excess funds to the purchasing office, which may either modify the contract or authorize the NAVPRO/SUPSHIP to do so.

(4) In preparing modifications deobligating funds under contracts involving multiple accounting classifications, NAVPRO/SUPSHIPS may find it necessary to obtain a record of Navy payments by accounting classifications in order to determine which accounting classifications to credit. This information is available on a specific request basis from the AAA (Authorized Accounting Activity), which can be identified by the six digit code in the accounting classification and reference to the index of these codes in the NAV COMPT Manual, Volume II, Chapter 5.

(5) Should a deobligation by a NAVPRO/SUPSHIP be later determined to have been excessive, the NAVPRO/SUPSHIP shall obtain the required funds from or through the purchasing office and modify the contract accordingly.

§ 737.20–706–50 [Deleted]

58. Part 737 is amended by deleting § 737.20–706–50 in its entirety.

§ 737.20–706–52 [Amended]

59. In paragraph (a) of § 737.20–706–52, line six under "Disbursing office" chart, the words "NRFC Pearl Harbor, Hawaii" are changed to "NFO Pearl Harbor, Hawaii."

60. Paragraph (c)(2)(ii) of § 737.20–706–52 is revised as follows: "The ordering activity will designate NRFC Washington as the paying office for all other deliveries. Contracts for into-plane deliveries will designate payment by Defense Supply Agency Administrative Support Center, DCASC–MF, Cameron Station, Alexandria, VA 22314."

61. In paragraph (e) of § 737.20–706–52, line six, the words "NRFC Brooklyn" are changed to "NRFC Norfolk."

62. In paragraph (g) of § 737.20–706–52, lines two, three, and four, the following sentence is deleted: "Invoices for into-plane deliveries under contracts will be forwarded directly to NRFC Washington."

63. Part 737 is amended by adding the following sections: § 737.21–101–1; § 737.21–102, § 737.21–102–1, § 737.21–102–2, § 737.21–102–3, § 737.21–102–4, § 737.21–103, § 737.21–103–1, and § 737.21–501, which provide as follows:

§ 737.21–102 Preparation of reports of undefinitized change orders.

§ 737.21–102–1 General.

The backlog of undefinitized changes and unpriced orders constitutes a blank check to contractors and is a contingent liability against the government. In order to maintain the integrity of the basic contract agreement, as well as to minimize government risk, timely definitization is required. Reports of Undefinitized Change Orders and Unpriced Orders are designed to provide the Chief of Naval Material with a dollar and action profile of each of the systems commands in summary form. However, Heads of Procuring Activities are expected to have information from the activities reporting to them in much greater

depth than the summary reports so they can readily furnish the Chief of Naval Material pertinent details in such areas as backlogs in individual activities, their goals for reducing the backlogs, reasons for fluctuations, pricing/definitization progress for outstanding actions and other data of similar import, should the need arise.

§ 737.21–102–2 Head of procuring activity action.

(a) *Reporting responsibility.* Heads of Procuring Activities, with the exception of the U.S. Marine Corps which submits reports directly to ASD(I&L), shall prepare and forward consolidated reports on Undefinitized Change Orders and Unpriced Order backlogs for Department of the Navy purchasing office and contract administration offices under their cognizance. The Commander, Naval Supply Systems Command will report on the Navy Inventory Control Points and other activities of the Navy Field Procurement System. Only those procurement actions estimated to exceed $10,000 are to be reported.

(b) *Treatment of procurement actions for which DCAS, U.S. Air Force and others have responsibility for executing priced supplemental agreements.* These procurement actions will be included in the Report of Undefinitized Change Orders; they will be excluded from the Unpriced Order Report.

(c) *Reporting procedures and submission schedules.* Report shall cover the periods ending June 30, September 30, December 31, and March 31, respectively. They shall be submitted to the Chief of Naval Material (MAT 0214) within 20 calendar days after the end of each reporting period.

(d) *Report format.* Quarterly reports shall be submitted on Exhibit A which is contained in § 737.21–102–3. When Exhibit A is reproduced, the notes may be deleted.

(e) *Report control symbol.* RCS DD–I&L(Q)1119(5200) applies.

§ 737.21–102–3 Preparation of reports of Undefinitized Change Order, DD–I&L(Q)1119(5200) Format A.

(a) *Definition—Undefinitized change order.* For the purpose of this report, an Undefinitized Change Order is any of the following modification for which a final equitable adjustment in contract price or cost remains to be negotiated:

(1) Change Orders § 1–201.1 of this title) issued pursuant to the Changes clause, or to other clauses of the contract invoking the Changes clause procedures:

(2) Supplemental Agreements used in preference to a change order when the authority to accomplish the modification is the Change clause; or

(3) Other Supplemental Agreements used to reflect other agreements of the parties modifying the terms of the contract.

(4) *Exceptions.* Changes and other modifications to letter contracts; contract modifications for provisioned and other items; Orders under Basic Ordering Agreements (BOA's); and Job Orders under Master Contracts for the Repair and Alteration of Vessels. None of these will be reported as Undefinitized Change Orders.

(b) *Applicability and coverage.* Quarterly reports of Undefinitized Change Orders shall be prepared for all undefinitized change orders over $10,000 issued by each Department of the Navy purchasing and contract administration office, and by DCAS, U.S. Air Force or U.S. Army administration office acting on behalf of Navy purchasing offices.

(c) *Dollar values reported.* The dollar value of an Undefinitized Change Order is the amount obligated, or deobligated.

(d) *Aging.* The age of an Undefinitized Change Order is calculated from the first of the month following the month the order was issued by the contracting office. Example: Order issued April 10; aging begins May 1.

§ 737.21–102–4 Preparation of report of Unpriced Orders, DD–I&L(Q) 1119(5200).

(a) *Definition—Unpriced order.* For the purpose of this report, an Unpriced Order is any of the following procurement actions in which the provisioning or other terms of the contract or agreement authorize the contracting officer/ordering activity to place orders for which firm prices will be negotiated at a subsequent date:

(1) Orders under Basic Ordering Agreement (BOA's)

(2) Job Orders under Master Contracts for the Repair and Alteration of Vessels; or

(3) Contract modifications requiring the contractor to furnish such items as spare parts, support equipment, technical manuals, supplies, repairs, services, etc.

(4) Exceptions. No letter contracts, or modifications under letter contracts, shall be included in the Report of Unpriced Orders.

(b) *Applicability and coverage.* Quarterly Reports of Unpriced Orders shall be prepared on each action over $10,000 and summarized for Navy purchasing and contract administration offices. Actions under the cognizance of DCAS, U.S. Air Force or U.S. Army administration offices shall be excluded from this report.

(c) *Dollar values reported.* Paragraph (c) of § 737.21–102–3 applies.

(d) *Aging.* Paragraph (d) of § 737.21–102–3 applies.

(e) *Format for report of undefinitized change orders and unpriced orders for the period ending.*

EXHIBIT A

_____ REPORT OF UNDEFINITIZED CHANGE ORDERS AND UNPRICED ORDERS FOR THE PERIOD ENDING _____
(SYSCOM)

RCS DD–I&L(Q)1119(5200)

*UNDEFINITIZED CHANGE ORDERS		(1) ON HAND BEGINNING OF PERIOD		(2) ISSUED DURING PERIOD		(3) ON HAND END OF PERIOD		(4) LESS THAN SIX MONTHS		(5) SIX MONTHS TO TWELVE MONTHS		(6) MORE THAN TWELVE MONTHS	
		ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS	ACTIONS	DOLLARS
N	SUPSHIPS (SEA use only)												
A	NAVPROS (AIR & SEA use only)												
V	HDQSYSCOM 02 (AIR, SEA & ELEX use only)												
Y	TOTAL (For use of all SYSCOMS)												
DCAS													
AIR FORCE													
ARMY													
TOTAL													
*UNPRICED ORDERS													
N	SUPSHIPS (SEA use only)												
A	NAVPROS (AIR & SEA use only)												
V	HDQSYSCOM 02 (AIR, SEA & ELEX use only)												
Y	TOTAL (For use of All SYSCOMS)												

*Notes on Preparing Report on Undefinitized Change Orders: (Notes may be deleted when form is reproduced)

(a) Balances appearing in column (1), On Hand Beginning of Period, in this report shall agree with those appearing in column (3), On Hand End of Period, for the previous period.

(b) The sum of actions and dollars in columns (1) and (2) shall not be less than the actions and dollar totals in column (3).

(c) The sum of actions and dollars in columns (4), (5) and (6) shall equal the actions and dollar totals in column (3).

(d) The dollar value of undefinitized change orders shall be the amount obligated.

(e) Exceptions noted in NPD 21–102.3(a)(iv) shall not be included in this report.

(f) All dollar values shall be treated as additions, whether they are increases or decreases, e.g.:

Order No. 1 plus	$100
Order No. 2 minus	50
Order No. 3 plus	50
Total	$200

*Notes on Preparing Report on Unpriced Orders:

Notes (a) through (e) for reporting undefinitized Change Orders likewise apply to Unpriced Orders, except that the NPD reference in Note (e) is NPD 21–102.4(a)(iv).

§ 737.21–103 Preparation of letter contract report.

§ 737.21–103–1 Reporting letter contract status.

(a) A quarterly Letter Contract Report shall be submitted to the Chief of Naval Material (MAT 0214) not later than the 10th working day after the end of the quarter. The Commander, Naval Supply System Command will report on the Navy Inventory Control Points and other activities of the Navy Field Procurement System. The report consists of three parts:

(1) Part 1, NAVMAT Form 4330/2

(Rev. 5–66), is the basic report listing all outstanding letter contracts and those that have been definitized during the reporting quarter. Preparation requires that appropriate information be shown in columns 1 through 10 for each letter contract. The dollar value of a letter contract shall include all modifications. Such modifications shall be treated as additions to the initial award and shall not be reported as separate line item entries on NAVMAT Form 4330/2. Data appearing in columns 1, 2, 3, and 6 shall remain the same for the life of the letter contract; information in columns 4, 5, 7, 8, and 9 shall be updated, when appropriate. Column 10 shall not be filled until the definitive contract has been signed by both parties. Once the definitization date has been entered in column 10, the item shall no longer be reported. Letter contracts that have been definitized during the quarter should appear last on the report. NAVMAT Form 4330/2 need be submitted in original only.

(2) Part 2, NAVMAT Form 4330/3(9–68), serves the dual purpose of reporting current status of definitization of letter contracts aged 6 months or more and stating what has transpired in the past affecting definitization progress. In the space entitled "Detailed Reasons Why Contract Has Not Been Definitized," the explanation should be given in chronological form so that there is a clear outline of sequential actions. In the space entitled "Present Status," a one-line statement of status as of the end of the reporting quarter will be sufficient. NAV MAT Form 4330/3 need be submitted in original only.

(3) Part 3, NAVMAT Form 4330/27(2–70), is a one-time report that shall be submitted on each newly awarded letter contract the first time the award is listed on NAVMAT Form 4330/2. The report is required in an original only, except where clearance must be obtained from the Chief of Naval Material (MAT 022). In such instances, the original of NAVMAT Form 4330/27 shall be furnished MAT 022 and a copy shall be included in the quarterly report to MAT 0214. The negotiation authority for the letter contract shall be indicated in parenthesis in Part II of this Form near the right-hand margin on the line provided for the Letter Contract Number. Also, on awards of $1 million or more, the SYSCOM 02 or his designated representative shall state briefly on the reverse of NAVMAT Form 4330/27(2–70) the reason for determining that a letter contract was the proper contractual instrument for the procurement.

(b) NAVMAT Forms 4330/2(Rev. 5–66), 4330/3(9–68), and 4330/27(2–70) are available through the Navy Supply System as "Cog-I" items.

(c) Report Control Symbol DD–I&L (Q)1119 applies.

§ 737.21–501 Miscellaneous procurement reports.

(a) *Purpose.* This Part 737 prescribes recurring reports covering contractual actions to fulfill statutory and managerial data requirements, and are not based on the reporting requirements of § 21 of this title.

(b) *Reports required.* The following annual reports will be submitted to the Assistant Secretary of Defense (Comptroller), Attn: Directorate for Information Operations. A copy of each annual report shall be provided to the Director of Banking and Contract Financing (NCD–4), Office of the Navy Comptroller.

(1) *Extraordinary contractual actions to facilitate the National Defense (PL 85–804)* will be submitted in duplicate within forty-five (45) days after the close of each calendar year in accordance with specific instructions and format provided in paragraph (e) of this section.

(2) *Grants for basic scientific research and transfer of title to Government equipment (PL 85–934)* will be submitted in duplicate within sixty (60) days after the close of each calendar year in accordance with specific instructions and format provided in paragraph (e) of this section.

(c) *Responsibilities for submission.* (1) The Chief of Naval Material is responsible for submitting the annual report required in paragraph (b) (1) of this section.

(2) The Chief of Naval Research is responsible for submitting the annual report required in paragraph (b) (2) of this section.

(d) *Feeder reports.* Navy procuring activities shall prepare feeder reports of contractual actions occurring during the calendar year in the format prescribed in paragraph (e) of this section and shall submit them to the Chief of Naval Material (MAT 02) or Chief of Naval Research (ONR 600), as appropriate.

(e) *Instructions for preparation and formats.* (1) See Exhibits A and B for reports under Pub. L. 85–804.

(2) See Exhibits C and D for reports under Pub. L. 85–934.

(f) *Reports symbols.* (1) Report Control Symbol DD–I&L(a) 597 applies to the report required in paragraph (b) (1) of this section.

(2) Report Control Symbol DD–I&L (A) 598 applies to the report required in paragraph (b) (2) of this section.

(g) *Instructions and forms for preparing reports.*

EXHIBIT A—INSTRUCTIONS FOR PREPARING REPORT ON EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE (PUBLIC LAW 85–804)

1. A summary of all actions approved or denied under PL 85–804 as implemented by Section XVII of the Armed Services Procurement Regulation (ASPR) will be prepared in accordance with Exhibit B. Source data for the summary will be obtained from Final Records of Request for Adjustment supported by Memoranda of Decision (ASPR, Section XVII, Parts 2 and 4) and Memoranda of Approval covering the exercise of residual powers (ASPR, Section XVII, Part 3).

2. *Column a.* Data will be shown separately for actions involving a specific dollar cost (lines 1a through 1f) and those not involving such cost (lines 2a through 2f). The titles for types of actions shown in lines 1a, b, and c are mandatory. Titles shown for other lines are illustrative only and may be modified as desired. An example of a contingent liability is a contract containing an indemnity clause insuring the contractors from loss due to radiation hazards.

3. *Columns b, c, and d.* These columns will be used to report data for actions which are approved in whole or in part.

4. *Columns e and f.* These columns will be used to report data for action which are denied in their entirety.

5. *Approved actions for more than $50,000.* To comply with the statutory reporting requirement, additional information is needed on approved actions of more than $50,000. Each contingent liability or advance payment approved under authority of PL 85–804 will be considered to be in excess of $50,000 for reporting purposes. For actions of more than $50,000, one copy of each Final Record of Request for Adjustment supported by a copy of the Memorandum of Decision, and each Memorandum of Approval will be submitted with the summary report. Each Final Record and Memorandum of Approval will be annotated to indicate the line number of the summary on which the action is reported.

EXHIBIT B

Extraordinary Contractual Actions To Facilitate The National Defense (PL 85–804)	Department			Period From To	
	Actions Approved			Actions Denied	
Type of Action (a)	No. (b)	Amount Claimed or Requested (c)	Amount Approved (d)	No. (e)	Amount Claimed or Requested (f)
1. Actions Involving Specific Dollar Cost	XXX	XXXXXXXXX	XXXXXXXXX	XXX	XXXXXXXXXXX
a. Amendments Without Consideration					
b. Correction of Mistakes					
c. Formalization of Informal Commitments					
d. (Other-Specify by type)					
e.					
f.					
2. Actions Not Involving Specific Dollar Cost	XXX	XXXXXXXXX	XXXXXXXXX	XXX	XXXXXXXXXXX
a. Amendments Without Consideration		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXXX
b. Contingent Liabilities		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXXX
c. Advance Payments		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXXX
d. (Other-Specify by Type)		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXXX
e.		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXXX
f.		XXXXXXXXX	XXXXXXXXX		XXXXXXXXXXX
Remarks					

EXHIBIT C—INSTRUCTIONS FOR PREPARING REPORT ON GRANTS FOR BASIC SCIENTIFIC RESEARCH AND TRANSFER OF TITLE TO GOVERNMENT EQUIPMENT (PUBLIC LAW 85–934)

1. Data will be reported in accordance with Exhibit D for each nonprofit education institution and each other non-profit institution to which (1) a grant was given during the report period for the conduct of basic scientific research, or (2) title to government equipment was vested or transferred either by grant or by contract. Definitions, policy, and administrative responsibilities are specified in Department of Defense Directive 3210.2.

2. Institutions will be listed in alphabetical order in column (a) of the format. The number and value of grants will be entered in columns (b) and (c) and will be based on fully approved grant documents. No entry will be made in these columns where only contracts are involved. A total of the number and value of such grants will be shown at the end of the list.

3. If the grant document provides for vesting of title to equipment in the grantee agency, the estimated cost of such equipment will be entered in column (d); otherwise this column will be left blank.

4. If title to equipment is transferred by contract, as provided in ASPR, Section IV, Paragraph 116, the acquisition cost will be entered in column (e). Contractual transfers of equipment with a value of less than $1,000 per item will be totalled and reported as footnote 2.

EXHIBIT D

Department _____
Grants for Basic Scientific Research
and
Transfer of Title to Government Equipment
(Public Law 85–934)

January-December _____

Name and Location of Institution (a)	Grants Approved		Title to Equipment Transferred by	
	Number (b)	Value in Dollars (c)	Grant[1] (d)	Contract[2] (e)
1. ABC Institute Akron, Ohio	1	$50,000	$1,000	–
2. LMN College Jersey City, N.J.	–	–	–	$2,500
3. STV University Los Angeles, Cal.	2	38,500	–	–
4. XYZ Hospital Battle Creek, Mich.	1	10,000	500	1,500
Total	4	$98,500	$1,500	$4,000

[1]Included in total of Column (c).

[2]Value of Transfers of Equipment with a Value of Less Than $1,000. $ _____

63. Part 737 is amended by adding § 737.22–102, after "Subpart V—Service Contracts" and before § 737.22–200, which provides as follows:

§ 737.22–102 Procurement of nonpersonal services.

(a) *Scope.* This part applies to the procurement of all services where the determination required by the contracting officer, as set forth in § 22–102.4(a) of this title, is required and the procurement action will exceed $10,000.

(b) *Policy.* As provided in § 22–102.1 (b) of this title, contracts for nonpersonal services, when properly issued and administered, represent an approved resource in the accomplishment of Navy programs. There are no firm rules for characterizing particular services as "personal" or "nonpersonal." However, the criteria set forth in § 22–102 of this title, for recognizing that a contract may be written so as to satisfy the requirements of a "nonpersonal" services contract, but may be administered, afterward, in such a way as to make it "personal" services. For instance, this can occur when a greater amount of supervision and control is exercised over the contractor or his employees than originally set forth in the statement of work. This must be avoided, and the potential for such misuse shall be considered when making the nonpersonal services determination.

(c) *Review and approval.* All determinations of nonpersonal services within the scope of paragraph (a) of this section shall be reviewed by counsel and approved at a level higher than the contracting officer prior to the issuance of the solicitation. This review and approval procedure applies to determinations in support of new procurement, the proposed exercise of an option, placement of orders under task type contracts or BOA's, and to proposed modifications which are simply funding actions or of a strictly administrative nature. The review and approval of proposed exercise of options, etc., shall focus on whether the determination of nonpersonal services incident to the execution of the original contract is still current and valid for the new effort. With respect to annually recurring service contracts in support of base operations (i.e., repair, maintenance, and overhaul of base equipment, movement and storage of household goods, janitorial services, mess attendant services, base transportation services, etc.), follow-on annual review and approval will not be mandatory, provided, (1) There has been an initial review and approval at a level higher than the contracting officer, (2) the contracting officer makes the determination required by § 22–102.4 of this title, and (3) the contractual requirements, terms and conditions are essentially unchanged. All doubtful cases will be referred to counsel in accordance with § 22–102.4 of this title.

(d) *Documentation.* The determination of nonpersonal services by the contracting officer shall at a minimum, contain: (1) A copy of the proposed work assignment,

(2) The determination required by § 22–102.4(a)(i) of this title, which shall fully address the criteria set forth in § 22–102.2 of this title, and

(3) If it is proposed to procure the requirement on a sole source basis, a complete justification establishing the impracticability of obtaining competition. This justification shall discuss the extent to which in-house capabilities are available and why they cannot be utilized, and shall also consider the potential for follow-on or added effort and whether or not such effort shall also be sole source.

§ 737.24–205–7 [Amended]

64. The section number of § 737.24–205–7 is changed from "§ 727.24–205–7" to "§ 737.24–205–7."

65. In § 737.24–205–7 the number "$2,500" is changed to "$10,000" at paragraph (a)(1), line one, and paragraph (a)(2), line three.

§ 737.26–101 [Amended]

66. In paragraph (b) § 737.26–101, lines 31 and 32, are changed from "only rarely should more time be required for complete definitization. It may be" to "only rarely should more time be required for complete definitization. When time in excess of 60 days is allowed for submission of price quotations, the 180 day period shall be adjusted accordingly (see § 4–303.3 of this title). It may be * * *."

§ 737.26–102 [Amended]

67. Paragraph (c) of § 737.26–102 is deleted.

68. Paragraph (d) of § 737.26–102 is revised as follows:

§ 737.26–102 Execution of a contract modification releasing excess funds.

* * * * *

(d) *Procedures.* (1) The Administrative Contracting Officer shall, subject to limitations prescribed in paragraph (b) of the section, execute a bilateral contract modification reducing the dollar balance of the contract when it is determined that excess funds are available for deobligation. (See § 737.20–702–8.)

* * * * *

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy,
Assistant Judge Advocate
General (Civil Law).

DECEMBER 10, 1976.

[FR Doc.76–37341 Filed 12–20–76;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 209—ADMINISTRATIVE PROCEDURES

Permits for Activities In Navigable Waters or Ocean Waters

On 23 April 1976 the Department of the Army acting through the Chief of Engineers published proposed regulations in the FEDERAL REGISTER to amend 33 CFR 209.120, paragraph (h)(2)(ii) with respect to the establishment of fees for processing applications for Department of the Army permits submitted in accordance with sections 9 and 10 of the River and Harbor Act of 1899, section 404 of the Federal Water Pollution Control Act Amendments of 1972 and the Marine Protection, Research and Sanctuaries Act of 1972. We have received comments from Senator Thomas F. Eagleton, The U.S. Department of Agriculture, Mr. J. Sydney Boone and the following industrial concerns:

Florida Power Corporation, Columbia Gas System Service Corporation, Ketchikan Pulp Company, Northern States Power Company.

Our final regulation has been modified to reflect the needed improvements that surfaced as a result of the public review as follows:

(a) Removal of the fee provisions from paragraph (h) (2) (ii) of 33 CFR 209.120 and redesignation of them as paragraph (h) (5). The opening of paragraph (h) (2) (ii) begins; "if the activity includes the discharge of dredged or fill material * * *." which tends to suggest that fees are required for section 404 activities only.

(b) Clarification of the terms "commercial versus non-commercial." A fee of $100.00 will be charged for permit applications when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise.

(c) Payment of fees. If the District Engineer determines after his review that the issuance of a permit is in the public interest, he will require payment of the applicable fee ($10/$100) prior to issuing the permit. No fees are required when the permit application is either withdrawn or the permit denied. This method of fee collections will eliminate the need for the applicant to submit a refundable fee with his permit application and the subsequent administrative burden associated with the handling of suspense fund accounts.

Pursuant to The Independent Offices Appropriation Act (31 U.S.C. 483a) and the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1414 (b)) the Department of the Army, acting through the Chief of Engineers is publishing the final regulations as follows:

§ 209.120 Permits for Activities in Navigable Waters or Ocean Waters.

* * * * *

(h) Applications for Authorizations.

(1) * * *

(2) * * *

(i) * * *

(ii) If the activity includes the discharge of dredged or fill material in the navigable waters of the transportation of dredged material for the purpose of dumping it in the ocean waters, the applications must include the source of the material, a description of the type, composition and quantity of the material, the method of transportation and disposal of the material, and the locations of the disposal site. Certification under section 401 of the Federal Water Pollution Control Act is required for such discharges into navigable waters.

(iii) * * *

* * * * *

(5) Fees are required for permit application under section 404 of the Federal Water Pollution Control Act Amendments of 1972, section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 and sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise. The final decision as to basis for fee (commercial vs. non-commercial) shall be solely the responsibility of the District Engineer. No fee will be charged if the applicant withdraws his application at any time prior to issuance of the permit and/or if his application is denied. Collection of the fee will be deferred until the applicant is notified by the District Engineer that a public interest review has been completed and that the proposed activity has been determined to be in the public interest. Upon receipt of this notification the applicant will forward a check or money order to the District Engineer, made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require a permit will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions or general permits. Agencies or instrumentalities of Federal, State or local governments will not be required to pay any fee in connection with the applications for permits. This fee structure will be reviewed from time to time.

* * * * *

Dated: November 30, 1976.

Approved:

VICTOR V. VEYSEY,
Assistant Secretary of the Army (Civil Works).

[FR Doc.76-37438 Filed 12-20-76;8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART III—GENERAL INFORMATION ON POSTAL SERVICE

Loose and Undeliverable Mail; Proposed Changes In Handling Procedures; Corrections; Effective Dates

In FR Doc. 76-36054 appearing at page 53677 in the FEDERAL REGISTER of Wednesday, December 8, 1976 the following changes should be made:

1. On page 53678, in the right hand column, in paragraph .442b, the words "item and show the" in the fifth line should be deleted.

2. On page 53679, in the left hand column, in item 3, the number "158.41" in the first line should be changed to "159.41".

In the FEDERAL REGISTER Document, referred to above the Postal Service indicated in the middle column on page 53678 that, except for dead parcel service area realignments, which are scheduled to become effective on January 29, 1977, all the proposed changes in handling procedures for loose and undeliverable mail would be made effective immediately on an interim basis. This was inaccurate in two respects: (1) The Postal Service did not intend to make effective immediately the proposed amendment of 159.721 b and g, under which the retention period for loose matter and for third- and fourth-class dead mail at bulk mail centers and the last office of address would be reduced from 60 to 30 days. No change will be made in this provision until all comments have been received and analyzed. (2) The Postal Service did not make the other proposed changes effective immediately upon publication in the FEDERAL REGISTER. These changes were put into effect on an interim basis on December 16, 1976.

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.76-37422 Filed 12-20-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 660-7]

PART 51—REQUIREMENTS FOR PREPARATION, ADAPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Air Quality Standards; Interpretative Ruling

The Interpretative Ruling appearing below addresses the issue of whether and

to what extent national air quality standards established under the Clean Air Act may restrict or prohibit growth of major new or expanded stationary air pollution sources. The ruling provides in general that a major new source may locate in an area with air quality worse than a national standard only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that there will be progress toward achievement of the standards. While the ruling is effective now, EPA is actively soliciting public comment on the ruling's basic policies and detailed provisons.

BACKGROUND

Section 110 of the Clean Air Act requires State Implementation Plans (SIP's) to insure that primary (health-related) national ambient air quality standards be attained as expeditiously as practicable, but not later than mid-1975 (except in those relatively few areas where an extension to mid-1977, at the latest, has been granted pursuant to § 110(e)). Secondary (welfare-related) ambient standards are to be met within a "reasonable time." Most SIP's have specified secondary standard attainment dates which are the same as the primary standard attainment dates.

Once the ambient standards have been attained, they must be maintained [section 110(a)(2)(B)]. By virtue of the Act's attainment and maintenance requirements and EPA's regulations appearing at 40 CFR 51.18, promulgated in August 1971, all SIP's must contain regulations requiring preconstruction review and disapproval of new or modified air pollution sources which would "interfere with" the attainment or maintenance of a national ambient air quality standard (NAAQS). Since the NAAQS attainment dates have already passed (or will soon pass) and the ambient standards have not been attained in many areas of the country, questions have arisen as to whether, and to what extent, new stationary sources may legally be permitted to construct in such areas. In response to these questions, EPA's interpretative ruling on the preconstruction review requirements of 40 CFR 51.18 is set forth below.

PUBLIC PARTICIPATION AND REVIEW OF RULING

A draft of the ruling was sent to all State air pollution control agencies in April, 1976, for review and comment. Their comments are available for public inspection at the EPA Public Information Reference Unit, 401 M Street, SW, Washington, D.C. 20460. In addition, EPA officials have discussed various drafts of the ruling in meetings with representatives of the State and Territorial Air Pollution Program Administrators, Association of Local Air Pollution Control Officials, National Governors Conference, National Conference of State Legislatures, U.S. Conference of Mayors/National League of Cities, National Association of Counties, AFL–CIO, industrial groups, and environmental groups.

EPA recognizes that the ruling has profound national policy implications and that even more extensive public debate is needed on the issues of whether (and how) economic growth may be accommodated where ambient air quality standards are being exceeded. EPA therefore is actively soliciting public comment on the ruling, in regard to both its basic policies and its detailed provisions. EPA may make adjustments to the ruling as warranted by the public comment. (Information regarding the nature and timing of the public comment is provided below.) EPA believes that these important national issues must ultimately be resolved by Congress through more explicit guidance in the Clean Air Act; hopefully, the publication of the ruling and the resulting public comments will provide a useful focus for legislative deliberations.

IMPLEMENTATION AND ENFORCEMENT OF INTERPRETATIVE RULING

In all but six SIP's, EPA has approved the State's own preconstruction review regulation adopted in conformance with 40 CFR 51.18. The ruling is therefore largely for the benefit of State and/or local reviewing authorities.[1] Only in the six States where EPA has been required to promulgate its own preconstruction review regulation in place of deficient State regulations will the provisions of the ruling be implemented directly by EPA (through its Regional Offices).

The ruling in no way requires a State or local reviewing authority to approve a source that meets the requirements set forth therein, since the authority to go beyond minimum Federal requirements is clearly protected by Section 116 of the Act. Available options, such as emission offsets, are allowable only at the discretion of local and State government. There are many reasons why a State or local authority might decide to prohibit a new source in addition to the criteria set forth in the ruling. Examples are the availability of alternative sites that are more environmentally acceptable, a decision that a proposed emission offset would not be in the best interest of the community, or a determination that allowing the new source would not in any case be in the best interest of the community.

Because interested parties in the public and private sector have (as noted above) been informally apprised of the basic provisions of the ruling and have had the opportunity to provide informal comments, and because the preconstruction review process is already being carried out under 40 CFR 51.18 (with continually-arising issues needing resolution), in EPA's judgment it is in the public interest to make the ruling immediately effective upon publication in the FEDERAL REGISTER. It would be highly impracticable merely to propose the ruling and defer its effectiveness, since both reviewing authorities and applicants for permits would be presented with even greater uncertainty in the interim period. As an articulation of the minimum requirements for preconstruction review of new sources pursuant to 40 CFR 51.18, the ruling's effect is to declare that any permits which are more lenient than allowed by the ruling fail to comply with the requirements of the Clean Air Act. Where a State issues (or has issued) a permit contrary to the Act's requirements, EPA can take legal action to invalidate the permit and/or proceed against the affected source owner to prevent construction.

RESPONSES TO PRELIMINARY COMMENTS

In response to preliminary informal comments (discussed above), it would be helpful to briefly clarify or highlight certain important points about the ruling. In some instances, new provisions have been added to earlier drafts in response to such comments.

1. *"Major" sources (Part II.B.).* The ruling provides that while all sources subject to SIP review requirements should be reviewed for emission limitation compliance, only "major" new sources must be subject to an ambient air quality analysis and the stringent requirements for lowest achievable emission rate, more than equivalent emission reductions, and assurance of reasonable progress toward NAAQS achievement. This is in recognition of the fact that reviewing authorities have limited resources and that smaller air pollution sources may individually have an insignificant impact on air quality. For the present, the ruling defines a "major" source as having an allowable emission rate of 100 or more tons per year (1000 for carbon monoxide).

In the notice set forth at 41 FR 55558 in today's FEDERAL REGISTER, however, EPA has tentatively proposed a definition of 50 or more tons per year (500 for carbon monoxide) to be incorporated into 40 CFR 51.18. It should thus be apparent that EPA has not finally determined that the 100-ton figure is the most

[1] Since the SIP regulations were adopted to comply with 40 CFR 51.18 and this ruling articulates what 40 CFR 51.18 requires at a minimum, EPA feels that States should generally be able to implement the ruling's requirements without regulatory SIP amendments. Where a State desires to use the maximum flexibility provided in the ruling (States retain the right to impose stricter conditions), it will be up to the State to determine whether regulatory changes and/or a State "interpretative" ruling may be needed as a matter of State law. It should be noted that EPA is publishing advance notice of proposed amendments to 40 CFR 51.18 elsewhere in today's *Federal Register* (41 FR 55558) which, when finalized, will in all probability require amendments to SIP preconstruction review regulations. States may therefore wish to defer any regulatory amendments until the EPA rulemaking process is completed.

appropriate, and States are strongly encouraged wherever resources permit to utilize a lower cut-off number. For the present, however, EPA will not legally require sources smaller than the 100-ton cut-off to undergo an air quality analysis.

2. *Lowest achievable emission rate (Part IV.A.1.)*. The ruling provides that a major new source seeking to locate in an area violating a NAAQS must meet an emission limitation which reflects the "lowest achievable emission rate" for such type of source. At a minimum, the lowest rate achieved in practice would have to be specified unless the applicant can demonstrate that it cannot achieve such a rate. In no event could the rate exceed any applicable new source performance standard (NSPS) set under section 111 of the Act.

This stringent requirement reflects EPA's judgment that a new source should be allowed to emit pollutants into an area violating a NAAQS only if its contribution to the violation is reduced to the greatest degree possible. While cost of achievement may be an important factor in determining an NSPS applicable to all areas of the country (clean as well as dirty) as a minimum, the cost factor must be accorded far less weight in determining an appropriate emission limitation for a source locating in an area violating statutorily-mandated health and welfare standards.

3. *Emission offset "Baseline" where EPA has called for a SIP revision or study (Part IV.C.4.)*. The principle behind the emission offset concept is that new sources should be allowed offset credit only for emission reductions from existing sources which would not otherwise be accomplished as a result of the Clean Air Act. Therefore, where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or has called for a study to determine the need for such a revision), the existing SIP emission limitations could not be used as the "baseline" for determining offset credits (as would normally be the case). Emission limitations representing reasonably available control measures, which most revised SIP's should soon require, should be used instead.

4. *No construction after January 1, 1979 without SIP revision (Part IV.A.5.)*. The ruling provides that in those areas (discussed in paragraph 3 immediately above) where EPA has called for a SIP revision or study, no permit issued on or after January 1, 1979, may allow the source to commence construction until EPA has approved or promulgated a SIP revision. This condition merely recognizes the fact that the new source review requirements of 40 CFR 51.18 are carried out as an integral part of a SIP, the purpose of which is to attain the health-related NAAQS as expeditiously as practicable. Where a SIP is so inadequate that EPA has identified the need to have it revised, it is EPA's judgment that new major source growth must be deferred if the SIP revision is not accomplished in a timely manner.

The January, 1979, date is relevant since in most SIP revisions which EPA requested in July, 1976, States were given until July 1, 1978, to submit all necessary SIP revision measures. Under the framework of the Clean Air Act, EPA would then have six months either to approve the State's revision or promulgate its own revision. In some areas, EPA may have called for a study of the need for a SIP revision but has not requested a revision on a specified schedule. If EPA calls for such a revision with a submission deadline of later than July 1, 1978, the ruling provides that the January 1, 1979, date would be correspondingly extended.

It can thus be seen that this condition provides a useful link between the 40 CFR 51.18 preconstruction review procedures and the SIP revision process. Where States are delayed in their efforts to revise their SIP's, the effect will be to delay the construction of any new major polluting sources in the affected areas.

5. *More than "One-for-One" emission offsets (Part IV.A.3.)*. It should be stressed that this ruling is not a "status quo" or "one-for-one" emission offset rule for areas violating the Act's health and welfare standards. The ruling makes clear that the emission offset reductions must exceed the new source's emissions so as to represent reasonable progress toward attainment of the NAAQS.

6. *No "Banking" of emission offset credit (Part IV.C.6.)*. The ruling allows no leftover emission offset credit to be "banked" for future pollution growth once an emission offset has been executed for a particular new source. To allow such "banking" would be inconsistent with a basic policy of the Act and the ruling—namely, that at a minimum, no new source should be allowed to make existing NAAQS violations any worse.

7. *"External" emission offsets (Part V)*. Several commenting States were concerned over possible administrative and legal problems associated with "external" emission offsets (provided by sources not owned by the new source owner). There were questions as to whether (1) States could legally tighten emission limits for existing sources in order to permit the construction of a new, possibly competing, source; (2) a source could reasonably persuade a competing source to further control its emission in order to permit the new source to be built; and (3) States would be required to develop a new regulation for each emission offset situation.

In response to these concerns, it should be noted that a State is not required to investigate emission offset possibilities as a result of each request to construct a new source. States may leave such arrangements to the proposed new source. It should be noted that in many cases the additional emission reduction can be obtained by improvements in a facility already owned by the developer of the new source. This would be particularly true in cases where the new emissions would come from expansion of an existing source. Where such intracompany emission offsets are not possible, the new source may be required to look elsewhere.

The State need not revise its regulations for each emission offset situation, but may use any available mechanism to obtain the necessary legally binding commitment (enforceable by EPA and private parties under the Clean Air Act) from the source providing the emission offsets. Finally, it should be noted that the ruling generally reflects the maximum flexibility permitted under the Clean Air Act, and the allowance for external emission offsets is an example of the flexibility that EPA has sought to provide. Although some States may find the provision for external emission offsets unworkable for various reasons, such flexibility should be available to those States that wish to use it.

8. *Sources in "Clean" areas which could impact on areas exceeding a NAAQS*. Several States requested specific quantification as to the incremental level of pollution that would be considered an exacerbation of an existing violation of a national standard. This question is only applicable when a major source is to be located in a "clean" area, but might impact an area that exceeds a NAAQS some distance away (i.e., a major source locating in the middle of an area that exceeds standards clearly will exacerbate the existing violations).

Over the next several months, EPA intends to develop regulatory guidance for standardizing the modeling procedures to be used in evaluating control strategies and in conducting new source reviews (with respect to both the NAAQS and regulations for preventing significant deterioration of air quality (see 40 CFR 52.21)). As part of this guidance, the issue of the "significance" of a source's air quality impact will be addressed. Until such guidance is available, reviewing agencies must make a reasonable cutoff on the geographic extent of the air quality calculations, based on a case-by-case analysis of such factors as the size of the source, the validity of the air quality predictions at long distances, and other relevant factors.

9. *"Fugitive Dust" problems*. Several States have expressed concern over the potential disapprovals of particulate matter sources planning to locate in rural areas that violate a particulate NAAQS due primarily to natural fugitive dust. The Agency has set forth a tentative proposal on this issue in the advance notice of proposed rulemaking appearing in today's FEDERAL REGISTER at 41 FR 55558. The intent at this time is to focus on urban areas and other areas that exceed the national standards for particulate matter as a result of man's activities. For the present, a State should consult the appropriate EPA Regional Office for guidance if the State is considering whether and to what extent the terms of the ruling should apply to particulate sources seeking to locate in rural areas. Where emission offsets are necessary, the Administrator finds no reason for not allowing credit from controlling existing fugitive emission sources, as long as all

other requirements set forth in the ruling are met.

It should be noted that especially for particulate matter, the geographical representativeness of a given monitor is often somewhat limited; that is, just because a monitor records high concentrations, it is not necessary to assume that such concentrations occur over a wide geographical area. Where a monitor is not located close to the proposed new source, it may be more appropriate (provided accurate emission inventories are available) to estimate existing air quality using a model than to use data from a remote monitoring location.

10. *Geographic applicability of ruling for hydrocarbon sources.* Because widespread violations of the NAAQS for photochemical oxidants have been found even in remote rural areas, some commentors have assumed that hydrocarbon control programs (including emission offset requirements) are necessary in all areas where there are violations of the photochemical oxidant standard. Based on the data available at this time, EPA believes that the rural oxidant problem is largely due to transport of oxidant or its precursors from major urban areas. Consequently a distinction can reasonably be made for control purposes between the extensive areas where an oxidant problem exists and the areas where much of the problem is created. As described in more detail in the notice appearing in today's FEDERAL REGISTER at 41 FR 55558, investigations are underway to determine the areas where hydrocarbon control programs will be most effective in reducing the highest oxidant concentrations. It is expected that the resulting guidance will focus on major metropolitan areas (larger than 200,000 population) extending as much as 85 miles from the largest urban centers. For the present, all of the provisions of the ruling must be applied to hydrocarbon sources seeking to locate within such areas that violate the oxidant NAAQS. The appropriate EPA Regional Office should be consulted if additional guidance is needed.

11. *No accommodation of new sources merely because primary NAAQS will eventually be achieved.* Some commenting States have argued that the Clean Air Act does not authorize EPA to adopt the stringent conditions of this ruling. The argument appears to be that even if a State has not achieved a primary NAAQS by the Congressionally-mandated deadline, the State may permit major new pollution sources to worsen present air quality so long as NAAQS achievement is projected for some time in the future.

EPA finds this argument totally untenable in light of the words of the Act, its legislative history, and Court decisions. The Act demands that each primary (health-related) NAAQS be achieved "as expeditiously as practicable," but in no event (if all extensions are allowed) later than mid-1977.

The Courts have continually emphasized that the Act demands primary NAAQS achievement by a date certain. EPA simply cannot interpret the Act to allow a major new source to make an existing primary NAAQS violation worse after the Congressional date certain has passed, and therefore even further delay the overdue NAAQS achievement. The only plausible interpretation of the Act other than that reflected in the ruling is that no new sources should be allowed in a violating area.

It should be noted that the Act is more flexible with regard to the secondary (welfare-related) NAAQS's. This point is dealt with in Part VI of the ruling.

12. *No accommodation of new sources based on cost-balancing approach.* Some have argued that a new source should be allowed to worsen existing NAAQS violations if a "cost-benefit" analysis indicates that the economic costs of necessary emission controls or offsets are excessive in relation to the resulting air quality benefits. For much the same reason discussed in section 11 immediately above, the Clean Air Act simply does not allow such an approach. Application of such a policy could allow further delay in achieving already-overdue standards.

Particularly with regard to the primary NAAQS's, Congress and the Courts have made clear that economic considerations must be subordinated to NAAQS achievement and maintenance. While the ruling allows for some growth in areas violating a NAAQS if the net effect is to insure further progress toward NAAQS achievement, the Act does not allow economic growth to be accommodated at the expense of the public health.

While EPA cannot allow cost considerations to override public health concerns, EPA is sensitive to the cost impacts of the Clean Air Act. EPA plans to assess the economic impact of the ruling as it is implemented to determine whether adjustments can be made consistent with the law, and/or whether legislative amendments would be prudent.

Again, the Act is more flexible with regard to the secondary NAAQS's. A cost-benefit analysis may convince a state of the need to defer its SIP attainment date for the secondary NAAQS's. (See part VI of the ruling.)

RELATIONSHIP TO OTHER PRECONSTRUCTION REVIEWS AND SIP REQUIREMENTS

Preconstruction review is also being implemented under EPA's regulations for preventing significant deterioration of air quality (40 CFR 52.21) and the national emission standards for hazardous air pollutants (40 CFR Part 61). In addition, voluntary reviews are being conducted for new sources subject to EPA's new source performance standards (40 CFR Part 60). In cases where States have been delegated the responsibility to implement these various programs, the reviews are being implemented at the State level. Where States have not accepted delegation, EPA retains the new source review responsibility. Certain types of sources may be subject to more than one of these regulations, and where the program responsibility rests with a single agency, the preconstruction reviews are normally carried out simultaneously. Even though a source may undergo simultaneous review under several of the above mentioned regulations, the provisions of this ruling are applicable only to the review required under 40 CFR 51.18. Thus a source may meet the requirements of the ruling, yet be disapproved because it does not meet the requirements of one of the other applicable regulations.

The ruling is not intended to replace the requirement for a SIP control strategy to attain and maintain standards. An individual emission offset must always result in reasonable progress toward attainment, but does not need to demonstrate that the NAAQS will be attained.

Since SIP control strategies must account for anticipated source growth, some questions may arise as to how new sources that are allowed to construct under the ruling should be dealt with in the revised SIP control strategies that EPA has recently requested. The projection and allocation of new sources and emissions should be carried out in the normal manner (see EPA's Air Quality Maintenance Guidelines, Vols. 7 and 13), although additional information on the size distribution of the new sources may be necessary. Where it is clear that a certain portion of the new sources and emissions will be subject to the terms of the ruling, the SIP control strategy does not need to account for such emissions (since the emission offset requirements will ensure that such sources will not increase emissions in the area).

PUBLIC COMMENTS

EPA strongly encourages all interested parties and the general public to comment on both the general policies and the detailed provisions of the ruling appearing below. EPA may make adjustments to the ruling as warranted by the public comment. Written comments should be submitted (preferably in triplicate) no later than February 15, 1977, to: Environmental Protection Agency, Control Programs Development Division (MD–15), Research Triangle Park, N.C. 27711.

EPA plans to conduct informal public hearings on this ruling in several cities throughout the country in the next few weeks. Notice of the time, place, and format of such hearings will appear shortly in the FEDERAL REGISTER.

Finally, it is important to note that a notice appears in today's FEDERAL REGISTER at 41 FR 55558 which sets forth EPA's advance notice of certain proposed changes to 40 CFR 51.18. The issues discussed there bear upon some of the issues addressed in this ruling, and persons commenting on both notices are urged to prepare a single set of comments.

Dated: December 15, 1976.

RUSSELL E. TRAIN,
Administrator.

INTERPRETATIVE RULING FOR IMPLEMENTATION OF THE REQUIREMENTS OF 40 CFR 51.18

I. INTRODUCTION

This notice sets forth EPA's Interpretative Ruling on the preconstruction review requirements for stationary sources of air pollution under 40 CFR 51.18. This ruling reflects EPA's judgment that the Clean Air Act allows a major new or modified source [1] to locate in an area that exceeds a national ambient air quality standard (NAAQS) only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from existing sources; and that these will be progress toward achievement of the NAAQS.

II. INITIAL ANALYSIS AND APPLICABLE REQUIREMENTS

A. *Review of all sources for emission limitation compliance.* The reviewing authority must examine each proposed new source subject to the SIP preconstruction review requirements approved or promulgated pursuant to 40 CFR 51.18 to determine if such a source will meet all applicable emission requirements in the SIP. If the reviewing authority determines that the proposed new source cannot meet the applicable emission requirements, the permit to construct must be denied.

B. Review of major sources for air quality impact. In addition, for each proposed "major" new source or "major" modification, the reviewing authority must perform an air quality analysis [2] to determine if the source will cause or exacerbate a violation of a NAAQS. A proposed source which would not be a "major" source may be approved without further analysis, provided such a source meets the requirement of Part II.A.

The term "major source" shall, as a minimum, cover any structure, building, facility, installation or operation (or combination thereof) for which the allowable emission rate is equal to or greater than the following:

	tons per year
Particulate matter	100
Sulfur oxides	100
Nitrogen oxides	100
Non-methane hydrocarbons (organics)	100
Carbon monoxide	1,000

Similarly a "major modification" shall include a modification to any structure, building, facility, installation or operation (or combination thereof) which increases the allowable emission rate by the amounts set forth above. A proposed new source with an allowable emission rate exceeding the above amounts is considered a major source under this ruling, even though such a source may replace an existing source with the result that the net additional emissions are increased by less than the above amounts.

Where a source is constructed or modified in increments which individually do not meet the above criteria, and which are not a part of a program of construction or modification in planned incremental phases previously approved by the reviewing authority, all such increments commenced after the date this ruling appears in the FEDERAL REGISTER or after the latest approval issued by the reviewing authority, whichever is most recent, shall be added together for determining applicability under this ruling. Moreover, where there is a group of proposed sources which individually do not meet the above criteria, but which would be constructed in substitution for a major source, the group should be collectively reviewed as a major source.

Allowable annual emissions shall be based on the applicable New Source Performance Standard (NSPS) set forth in 40 CFR Part 60 or the applicable SIP emission limitation, whichever is less, and the maximum annual rated capacity of the source. If the source is not subject to either a NSPS or SIP emission limitation, annual emissions shall be based on (1) the maximum annual rated capacity, and (2) the emission rate agreed to by the source as a permit condition.

The following shall not, by themselves, be considered modifications under this ruling:

(1) Maintenance, repair, and replacement which the reviewing authority determines to be routine for a source category;

(2) An increase in the hours of operation, unless limited by previous permit conditions;

(3) Use of an alternative fuel or raw material (unless limited by previous permit conditions), if prior to the publication of this ruling in the FEDERAL REGISTER, the source is designed to accommodate such alternative use; or

(4) Change in ownership of a source.

C. Air quality impact analysis. For "stable" air pollutants (i.e., SO_2, particulate matter and CO), the determination of whether a source will cause or exacerbate a violation of a NAAQS generally should be made on a case-by-case basis as of the proposed new source's operation date using the best information and analytical techniques available (i.e., atmospheric simulation modeling, unless a source will clearly impact on a receptor which exceeds a NAAQS). This determination should be independent of any general determination of nonattainment or judgment that the SIP is substantially inadequate to attain or maintain the NAAQS. This is because the area affected by a determination of SIP inadequacy usually conforms to established administrative boundaries such as Air Quality Control Regions (AQCR's) rather than a precisely-defined area where air quality problems exist. For example, a SIP revision may be required for an AQCR on the basis of a localized violation of standards in a small portion of the AQCR. If a source seeks to locate in the "clean" portion of the AQCR and would not affect the area presently exceeding standards or cause a new violation of the NAAQS, such a source may be approved. For major sources of nitrogen opides, the initial determination of whether a source would cause or exacerbate a violation of the NAAQS for NO_2 should be made using an atmospheric simulation model assuming all the nitrogen oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate. For major sources of hydrocarbons, see the discussion entitled "Geographic Applicability of Emission Offset Requirements for Hydrocarbon Sources" in the Notice appearing in today's FEDERAL REGISTER at 41 FR 55558.

III. SOURCES LOCATING IN "CLEAN" AREAS, BUT WOULD CAUSE A NEW VIOLATION OF A NAAQS

If the reviewing authority finds that the allowable emissions [3] from a proposed major source would cause a new violation of a NAAQS, but would not exacerbate an existing violation, approval may be granted only if both of the following conditions are met:

Condition 1. The new source is required to meet a more stringent emission limitation [4] and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

Condition 2. The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Part V below.

IV. SOURCES THAT WOULD EXACERBATE AN EXISTING VIOLATION OF A NAAQS

A. *Conditions for approval.* If the reviewing authority finds that the allowable emissions [3] from a proposed source would exacerbate an "existing" violation (i.e., as of the source's proposed start-up date) of a NAAQS, approval may be granted only if all the following conditions are met:

Condition 1. The new source is required to meet an emission limitation which specifies the lowest achievable emission rate for such type of source.[5] In determining the applicable emission limitation, the reviewing authority must consider the most stringent emission limitation in any SIP and the lowest emission rate which is achieved in practice for such type of source. At a minimum, the lowest emission rate achieved in practice must be specified unless the applicant can sustain the burden of demonstrating that it cannot achieve such a rate. In no event could the specified rate exceed any applicable NSPS. Even where the applicant demonstrates that it cannot achieve the lowest

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[1] Hereafter the term "new source" will be used to denote both new and modified sources.

[2] Required only for those pollutants causing the proposed source to be defined as a "major" source, although the reviewing authority may address other pollutants if deemed appropriate.

[3] Where a new source will result in specific and well defined indirect or secondary emissions which can be accurately quantified, the reviewing authority should consider such secondary emissions in determining whether the source would cause or exacerbate a violation of the NAAQS. However, since EPA's authority to perform indirect source review relating to parking-type facilities has been restricted by statute, consideration of parking-type indirect impacts is not required.

[4] If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under Section 304. Hereafter, the term "emission limitations" shall also include such design, operational, or equipment standards.

emission rate achieved in practice, this in itself would not operate to raise the required emission limitation to the applicable NSPS. The "lowest achievable emission rate" requirement must still apply, and the applicant would retain the burden of demonstrating that it cannot achieve any rate more stringent than the NSPS rate.

Condition 2. The applicant must certify that all existing sources owned or controlled by the owner or operator of the proposed source in the same AQCR as the proposed source are in compliance with all applicable SIP requirements or are in compliance with an approved schedule and timetable for compliance under a SIP or an enforcement order issued under Section 113. The reviewing authority must examine all enforcement orders for sources owned or operated by the applicant in the AQCR to determine if more expeditious compliance is practicable. Where practicable, a more expeditious compliance schedule for such sources must be required as an enforceable condition of the new source permit.

Condition 3. Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that the total emissions from the existing and proposed sources are sufficiently less than the total allowable emissions from the existing sources under the SIP [5] prior to the request to construct or modify so as to represent reasonable progress toward attainment of the applicable NAAQS.[2] Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO_2 reductions).

Condition 4. The emission offsets will provide a positive net air quality benefit in the affected area (see Part IV.D. below).[2]

Condition 5. For a source which would be located in an area where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or an area where EPA has called for a study to determine the need for such a revision), permits granted on or after January 1, 1979 [6] must specify that the source may not commence construction until EPA has approved or promulgated a SIP revision for the area (if the source is a major source of the pollutant subject to the call for revision or study).

B. *Exemptions from certain conditions.* The reviewing authority may exempt a source from Condition 1 under Part III or Conditions 3 and 4 under Part IV.A., in cases where the source must switch fuels due to lack of adequate fuel supplies or where the source is required as a result of EPA regulations (i.e., lead-in-fuel requirements) to install additional process equipment and no exception from such an EPA regulation is available to the source. Such an exemption may be granted only if: (i) the applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Condition 1 under Part III or Conditions 3 and 4 under Part IV.A. and that such efforts were unsuccessful; (ii) the applicant has secured all available emission offsets; and (iii) the applicant will continue to seek the necessary emission offsets and apply them when they become available. Such an exemption may result in the need to revise the SIP to provide additional control of existing sources.

[5] Subject to the provisions of Part IV.C. below.

[6] Or, if later, the date which is six months after the deadline for submittal of the revision.

C. *Baseline for determining credit for emission offsets.* Except as provided below, the baseline for determining credit for emission and air quality offsets will be the SIP emission limitations in effect at the time the application to construct or modify a source is filed. Thus, credit for emission offset purposes may be allowable for existing control that goes beyond that required by the SIP.

1. *No applicable SIP requirement.* Where the applicable SIP does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions at the time the permit request is filed (determined by source test or other appropriate means).

2. *Combustion of fuels.* Generally, the emissions for determining emission offset credit involving an existing fuel combustion source will be the allowable emissions under the SIP for the type of fuel being burned at the time the new source application is filed (i.e., if the existing source has switched to a different type of fuel at some earlier date, any resulting emission reduction [either actual or allowable] shall not be used for emission offset credit). If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit, based on the allowable emissions for the fuels involved, is acceptable; provided, that the permit must be conditioned to require the use of a specified alternative control measure which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The reviewing authority should ensure that adequate long-term supplies of the new fuel are available before granting emission offset credit for fuel switches.

Where the particulate emission limit for fuel combustion exceeds the appropriate uncontrolled emission factor in "Compilation of Air Pollutant Emission Factors" (AP–42) (as when a State has a single emission limit for all fuels), emission offset credit will only be allowed for control below the appropriate uncontrolled emission factor in AP–42. (Actual emissions determined by a source test may be used in place of the uncontrolled emission factor in AP–42 in the above situation.)

3. *Operating hours and source shutdown.* Emission offsets generally should be made on a pounds-per-hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected production rate. The reviewing agency should specify other averaging periods (e.g., tons per year) in addition to the pounds-per-hour basis if necessary to carry out the intent of this ruling. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below that which existed at the time the new source application was submitted; provided, that the work force to be affected has been notified of the proposed shutdown or curtailment. Emission offsets that involve reducing operating hours or production or source shutdowns must be legally enforceable, as is the case for all emission offset situations.[7]

[7] Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after SIP approval as a result of enforcement action providing for a new source as a replacement for the shut down or curtailment, credit for such shut down or curtailment may be applied to offset emissions from the new source.

Nothing contained in this ruling is intended to alter EPA's interpretation of the Clean Air Act with regard to the use of "supplemental control systems" or "stack height increases" as set forth at 41 FR 7450 (February 18, 1976).

4. *EPA has requested a SIP revision (or study).* Where EPA has found that a SIP is substantially inadequate to attain a NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or EPA has called for a study to determine the need for such a revision) the baseline for emission offset credit involving sources of the relevant pollutant will be the emissions resulting from the application of reasonably available control measures. The intent of this requirement is to prevent sources from receiving emission offset credit against an inadequate SIP and nullifying the gains that will be achieved through the required SIP revision. In effect, States should use the anticipated SIP revision as the baseline for emission offset credit until such time as the SIP is formally revised.

5. *Credit for hydrocarbon substitution.* EPA has found that almost all non-methane hydrocarbons are photochemically reactive and that low reactivity hydrocarbons eventually form as much photochemical oxidant as the highly-reactive hydrocarbons. Therefore, no emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity.

6. *No "banking" of emission offset credit.* Once an emission offset has been executed for a particular new source, there can be no left-over credit to "bank" for additional new source growth in the future. This "no banking" rule would not prohibit, however, the issuance of a single permit to cover more than one phase of a phased-construciton project.[8] Similarly, for State-initiated emission offsets (see Part V.B.), several different sources may be allowed to construct as part of a general SIP revision, so long as the plans for each source are definite and such sources are specifically identified as the recipients of the emission offset credits in the SIP revision.

D. *Geographic area of concern.* In the case of emission offsets involving hydrocarbons or NO_x, the offsets may be obtained from sources located anywhere in the broad vicinity of the proposed new source (within the area of nonattainment, and usually within the same air quality control region). This is because areawide oxidant and NO_2 levels are generally not as dependent on specific hydrocarbon or NO_x source location as they are on overall area emissions. However, since the air quality impact of SO_2, particulate and carbon monoxide sources is site dependent, simple areawide mass emission offsets are not appropriate. For these pollutants, the reviewing authority should require atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. However, to avoid unnecessary consumption of limited, costly and time consuming modeling resources, in most cases it can be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height, the air quality test under Condition 4 in Part IV.A. above will be met. Thus, when stack emissions are offset against a ground level source at the same site, modeling would be required.

E. *Reasonable progress towards attainment.* As long as the emission offset is greater than one-for-one, and the other criteria set

[8] If any phase covered by the permit is for any reason not constructed, there would be no resulting credit to "bank."

forth above are met, EPA does not intend to question a reviewing authority's judgment as to what constitutes reasonable progress towards attainment as required under Condition 3 in Part IV.A. above. Reviewing authorities should bear in mind, however, that the control achieved through emission offsets can significantly assist the authorities in developing legally acceptable SIP's.

V. ADMINISTRATIVE PROCEDURES

The necessary emission offsets may be proposed either by the owner of the proposed source or by the local community or the State. The emission reduction committed to must be enforceable by authorized State and/or local agencies and under the Clean Air Act, and must be accomplished by the new source's start-up date.

A. *Source initiated emission offsets.* A source may propose emission offsets which involve (1) reductions from sources controlled by the source owner (internal emission offsets); and/or (2) reductions from neighboring sources (external emission offsets). The source does not have to investigate all possible emission offsets. As long as the emission offsets obtained represent reasonable progress toward attainment, they will be acceptable. It is the reviewing authority's responsibility to assure that the emission offsets will be as effective as proposed by the source. An internal emission offset will be considered enforceable if it is made a SIP requirement by inclusion as a condition of the new source permit and the permit is forwarded to the appropriate EPA Regional Office.[9] An external emission offset will not be accepted unless the affected source(s) is subject to a new SIP requirement to ensure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State and/or private parties. The form of the SIP revision may be a State or local regulation, operating permit condition, consent or enforcement order, or any other legally enforceable mechanism available to the State. If a SIP revision is required, the public hearing on the revision may be substituted for the normal public comment procedure required for all major sources under 40 CFR 51.18. The formal publication of the SIP revision approval in the FEDERAL REGISTER need not appear before the source may proceed with construction. To minimize uncertainty that may be caused by these procedures, EPA will, if requested by the State, propose a SIP revision for public comment in the FEDERAL REGISTER concurrently with the State public hearing process. Of course, any major change in the final permit/SIP revision submitted by the State may require a reproposal by EPA.

B. *State or community initiated emission offsets.* A State or community which desires that a source locate in its area may commit to reducing emissions from existing sources to sufficiently outweigh the impact of the new source and thus open the way for the new source. As with source-initiated emission offsets, the commitment must be something more than one-for-one. This commitment must be submitted as a SIP revision by the State.

The provisions of Part IV.C.4. above remain applicable to State or community initiated emission offsets. Therefore, where EPA has found that a SIP is substantially inadequate to attain an NAAQS and has formally requested a SIP revision pursuant to Section 110(a)(2)(H)(ii) (or has called for a study to determine the need for such a revision), the resulting emission reduction may not be used as an emission offset.

VI. POLICY WITH RESPECT TO SECONDARY STANDARDS

The statutory attainment dates for the primary NAAQS have now passed or will pass very soon and cannot be administratively extended. Therefore, this ruling does not allow a new source to cause or exacerbate a primary NAAQS violation on the grounds that the SIP will eventually achieve the NAAQS (as may have been permitted in some cases before the statutory attainment dates).

The Act provides more flexibility with respect to secondary NAAQS's. Rather than setting specific deadlines, Section 110 requires secondary NAAQS's to be achieved within a "reasonable time." Under 40 CFR 51.13(b), a State may revise its SIP to provide extensions from its present secondary NAAQS deadlines. If, therefore, a State submits (and EPA approves) such a revision, a new source which would cause or exacerbate a secondary NAAQS violation may be exempt from the Conditions of Part IV.A. so long as the new source meets the applicable SIP emission limitations and will not interfere with attainment by the newly-specified date.

[FR Doc.76-37346 Filed 12-20-76;8:45 am]

[9] The emission offset will therefore be enforceable by EPA under Section 113 as an applicable SIP requirement and will be enforceable by private parties under Section 304 as an emission limitations. EPA will publish notice of such emission offsets in the FEDERAL REGISTER.

[FRL 656-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Alabama: Approval of Plan Revision

On October 7, 1976 (41 FR 44194), the Agency announced as a proposed rulemaking, an implementation plan change which the State of Alabama had adopted and submitted for EPA's approval. Copies of the materials submitted by Alabama were made available for public inspection and written comments on the proposed revision were solicited. The purpose of the present notice is to announce the Administrator's approval of this revision. An evaluation of them may be obtained by consulting the personnel of the Agency's Region IV Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30308, or telephone 404/881-3286.

On August 20, 1975, the Administrator revised 40 CFR Part 51 by changing the emergency level for photochemical oxidants from 1200 $\mu g/m^3$ to 1000 $\mu g/m^3$, one-hour average. The Alabama Air Pollution Control Commission, on March 30, 1976, amended its regulation to reflect this change. The amendment was submitted for EPA's approval on April 23, 1976.

This revised emergency level for photochemical oxidants is hereby approved. These actions are effective immediately since they serve only to notify implementation plan changes already in effect under Alabama law and impose no additional burden to anyone.

Copies of the information submitted by the State are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.

Public Information Reference Unit, Library Systems Branch PM-213, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

(Section 110(a), Clean Air Act (42 U.S.C. 1857c-5(a)))

Dated: December 14, 1976.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

Section 52.50 is amended by adding paragraph (c)(15) as follows:

§ 52.50 **Identification of plan.**

* * * * *

(c) * * *

(15) Revised emergency level for photochemical oxidants (emergency episode control plan) submitted by the Alabama Air Pollution Control Commission on April 23, 1976.

[FR Doc.76-37347 Filed 12-20-76;8:45 am]

[FRL 657-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the Virgin Islands Implementation Plan

This notice announces approval by the Environmental Protection Agency (EPA) of a revision to the Virgin Islands Implementation Plan.

As requested by the Virgin Islands on August 16, 1976, the EPA has reconsidered its disapproval of the revised 12 V.I.R. & R. 9:204-26, "Sulfur Compounds Emission Control," subsections (a)(1), (a)(3), (b), (c) and (d) as they apply to the island of St. Croix. Receipt of this request was announced in the October 1, 1976 FEDERAL REGISTER at 41 FR 43421 which contains a full description of the proposed revision.

In the October 1, 1976 notice, EPA established a 30-day period for receipt of comments from the public on whether or not the proposed revision to the Virgin Islands Implementation Plan shhould be approved. No comments were received.

EPA has determined that approval of this proposed revision to the Virgin Islands Implementation Plan would not result in the contravention of any applicable ambient air quality standard. The proposed revision has been found to be consistent with current EPA policies and goals set forth by the requirements of section 110(a)(2)(A)-(H) of the Clean Air Act and EPA regulations in 40 CFR Part 51 and, therefore, is approved.

Effective date: This revision to the Virgin Islands Implementation Plan becomes effective January 21, 1977.

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

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

Dated: December 14, 1976.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart CCC—Virgin Islands

1. Section 52.2770 is amended by adding new paragraph (c)(8) as follows:

§ 52.277 **Identification of plan.**

* * * * *

(c) Supplemental information was submitted on: * * *

(8) As it applies to the island of St. Croix, per an August 16, 1976 request from the Virgin Islands, revised 12 V.I.R. & R. 9:204-26 (Sulfur Compounds Emission Control) excluding subsection (a)(2), as submitted on January 21, 1976 by the Governor of the Virgin Islands.

2. In § 52.2780, paragraph (b) is revised and paragraph (c) is added as follows:

§ 52.2780 **Control strategy for sulfur oxides.**

* * * * *

(b) 12 V.I.R. & R. 9:204-26, as submitted to EPA on January 21, 1976 and as amended and resubmitted to EPA on June 3, 1976, is approved as it applies to the islands of St. Thomas and St. John. Subsection (a)(2) of the said regulation is not approved as it applies to the island of St. Croix because of the inadequacy of the control strategy demonstration noted in paragraph (a) of this section. The remaining subsections of the regulation are approved as they apply to the island of St. Croix. Consequently, all sources on St. Croix are required to conform to the sulfur-in-fuel limitations contained in 12 V.I.R. & R. 9:204-26 as originally submitted to EPA on January 31, 1972 and approved by EPA on May 31, 1972.

(c) Reference to "Section (a)(2)" in subsection (d) of 12 V.I.R. & R. 9:204-26, as submitted to EPA on January 21, 1976 and as amended and resubmitted to EPA on June 3, 1976, refers to the following approved limitations: (1) For the islands of St. Thomas and St. John, subsection (a)(2) of section 204-26 as submitted to EPA on January 21, 1976 and as amended and resubmitted to EPA on June 3, 1976; (2) for the island of St. Croix, subsection (a)(2) of section 204-26 as originally submitted to EPA on January 31, 1972 and approved by EPA on May 31, 1972.

[FR Doc.76-37348 Filed 12-20-76;8:45 am]

[FRL 661-6]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to the State of Ohio

Pursuant to the delegation of authority to implement the standards of performance for new stationary sources (NSPS) to the State of Ohio on August 4, 1976, EPA is today amending 40 CFR 60.4, Address to reflect this delegation. A Notice announcing this delegation is published in the Notices section of this issue of the FEDERAL REGISTER (FR Doc. 76-37487). The amended § 60.4 is set forth below which adds the addresses of the Agencies in Ohio which assist the State in the delegated authority to that list of addresses to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must be sent.

The Administrator finds good cause for foregoing prior notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on August 4, 1976, and it serves no purpose to delay the technical change of this addition of the addresses to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of section 111 of the Clean Air Act, as amended.

(42 U.S.C. 1857c-6.)

Dated: December 10, 1976.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4, paragraph (b) is amended by revising subparagraph KK, to read as follows:

§ 60.4 **Address.**

* * * * *

(b) * * *

(A)-(JJ) * * *

(KK) Ohio—

Medina, Summit and Portage Counties; Director, Air Pollution Control, 177 South Broadway, Akron, Ohio, 44308.

Stark County; Director, Air Pollution Control Division, Canton City Health Department, City Hall, 218 Cleveland Avenue SW, Canton, Ohio, 44702.

Butler, Clermont, Hamilton and Warren Counties; Superintendent, Division of Air Pollution Control, 2400 Beekman Street, Cincinnati, Ohio, 45214.

Cuyahoga County; Commissioner, Division of Air Pollution Control, Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, Ohio, 44115.

Lorain County; Control Officer, Division of Air Pollution Control, 200 West Erie Avenue, 7th Floor, Lorain, Ohio, 44052.

Belmont, Carroll, Columbiana, Harrison, Jefferson, and Monroe Counties; Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, Ohio, 43952.

Clark, Darke, Greene, Miami, Montgomery, and Preble Counties; Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, Ohio, 45402.

Lucas County and the City of Rossford (in Wood County); Director, Toledo Pollution Control Agency, 26 Main Street, Toledo, Ohio, 43605.

Adams, Brown, Lawrence, and Scioto Counties; Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, Ohio, 45662.

Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Knox, Marion, Mercer, Morrow, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except City of Rossford), and Wyandot Counties; Ohio Environmental Protection Agency, Northwest District Office, 111 West Washington Street, Bowling Green, Ohio, 43402.

Ashtabula, Geauga, Lake, Mahoning, Trumbull, and Wayne Counties; Ohio Environmental Protection Agency, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio, 44087.

Athens, Coshocton, Gallia, Guernsey, Highland, Hocking, Holmes, Jackson, Meigs, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties; Ohio Environmental Protection Agency, Southeast District Office, Route 3, Box 603, Logan, Ohio, 43138.

Champaign, Clinton, Logan, and Shelby Counties; Ohio Environmental Protection Agency, Southwest District Office, 7 East Fourth Street, Dayton, Ohio, 45402.

Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, and Union Counties; Ohio Environmental Protection Agency, Central District Office, 369 East Broad Street, Columbus, Ohio, 43215.

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[FR Doc.76-37488 Filed 12-20-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-1062]

PART 1—PRACTICE AND PROCEDURE
PART 73—RADIO BROADCAST SERVICES

Regulation of Radio and Television Broadcasting

Correction

In FR Doc. 76-35673 appearing on page 53022 in the issue for Friday, December 3, 1976, in the third column of page 53025 after the 6th line of § 1.544 (a), the following line was omitted: "monitor point field strength measurements and antenna proof of perform-".

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 26—PUBLIC ENTRY AND USE
PART 33—SPORT FISHING

The following special regulations are issued and are effective on January 1, 1977.

§ 26.34 **Special regulations; public access, use, and recreation; for individual wildlife refuge areas.**

OKLAHOMA

WICHITA MOUNTAINS WILDLIFE REFUGE

The Wichita Mountains Wildlife Refuge, Oklahoma, is open to public access, use, and recreational activity from January 1 through December 31, 1977, inclusive, subject to the provisions of Title 50, Code of Federal Regulations,

and all applicable Federal and State laws and regulations and all official signs posted in the area. The public use area totals approximately 22,400 acres and is delineated on maps available at refuge headquarters, Cache, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and subject to the following special conditions:

(1) Sightseeing, nature observation, photography and hiking are permitted.

(2) Camping is permitted only in recreation areas designated for that use, at the entrance, by signs. Exceeding posted unit capacities is prohibited. A written permit is required for stays exceeding 7 days.

(3) Picnicking is permitted only in recreation areas designated for that use, at the entrance, by sign. Exceeding posted visiting hours or posted unit capacities is prohibited.

(4) Fires are permitted only in recreation areas where camping or picnicking is allowed and only at such times or hours that the areas are open to these uses. Dead, fallen timber may be used.

(5) Boating is permitted only on Elmer Thomas Lake. All other floating devices are prohibited on all refuge waters unless permitted by other Federal regulations. Boating is prohibited in marked scuba diving and swimming areas.

(6) Swimming, wading, snorkeling and skin diving are permitted only at swimming beaches designated by sign, and only when these beaches are manned by refuge supervised lifeguards. Lifejackets and buoyant vests may be worn while swimming. Food, beverages and pets are prohibited on swimming beaches. Beach users must comply with all official beach signs posted on the area and with the directions of authorized lifeguards.

(7) Scuba diving is permitted only on Elmer Thomas Lake. Diving areas must be marked with appropriate warning flags when outside of marked swimming areas. Flags must be removed before leaving the area. Inflatable vests may be worn while diving.

(8) Pets are permitted only if they are confined or kept on a leash not to exceed 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

(9) Vehicles found parked in any closed area, any "no parking" area, or in any area after posted visiting hours may be removed from the area. Any charges or expenses incurred by such removal, including storage fees, shall be borne by the owner of the vehicle.

(10) Possession or use of any alcoholic beverage by persons under 21 years of age is prohibited.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ARIZONA AND CALIFORNIA

CIBOLA NATIONAL WILDLIFE REFUGE

Sport fishing and the taking of bullfrogs on the Cibola National Wildlife Refuge, Arizona and California, is permitted on waters designated by signs as open to fishing. These waters are delineated on maps available at refuge headquarters, Blythe, California, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Cibola Lake and associated waters are closed to fishing and boating from January 1 through March 1, 1977, inclusive and from October 1 through December 31, 1977, inclusive. The use of boats, rafts, or floating devices is prohibited on Cibola Lake during this period. This closure is necessary to protect migratory waterfowl wintering on Cibola Lake from disturance.

(2) Bullfrogs may be taken from July 1 through November 30, 1977, inclusive. Frogs may be taken by spear, gig, hook and line, bow and arrow, fishing tackle, or by hand with the aid of artificial light. Cibola Lake is closed to taking of bullfrogs from October 1 through November 30, 1977, inclusive.

(3) The possession of trotlines on the refuge is prohibited. A trotline is any unattended hook and line arrangement that, when used, constitutes a violation of the "angling" laws of both Arizona and California.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

HAVASU NATIONAL WILDLIFE REFUGE

Sport fishing on the Havasu National Wildlife Refuge, Arizona and California, is permitted on waters designated by signs as open to fishing. These waters, comprising 12,388 acres, are delineated on maps available at refuge headquarters, Needles, California, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1977, inclusive, except that the closed area, as posted, in Topock Marsh is closed to fishing and entry from January 1 through January 31, 1977, inclusive, and from October 1 through December 31, 1977, inclusive.

(2) The possession of trotlines or limblines on the refuge is prohibited. A trotline or limbline is any unattended hook and line arrangement that, when used, constitutes a violation of the "angling" laws of both Arizona or California.

(3) The taking of fish with bow and arrow is prohibited.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

IMPERIAL NATIONAL WILDLIFE REFUGE

Sport fishing and the taking of bullfrogs, crustaceans and mollusks on the Imperial National Wildlife Refuge, Arizona and California, is permitted in all areas except in those areas closed to public entry. These open areas, comprising 8,100 acres, are delineated on maps available at refuge headquarters, Martinez Lake, Arizona, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing and the taking of bullfrogs, crustaceans and mollusks shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1977, inclusive, except for an area of approximately 165 acres in Martinez Lake, Arizona, as posted, to be closed during the periods January 1 through March 1, 1977, inclusive, and from October 1 through December 31, 1977, inclusive, and an area of approximately 60 acres in Ferguson Lake, California, as posted, to be closed during the same periods.

(2) The use of bow and arrow for the taking of carp, buffalo, mullet, suckers, and bullfrogs is permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

NEW MEXICO

BITTER LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Bitter Lake National Wildlife Refuge, New Mexico, is permitted only on pool Units 5, 6, 7, 15 and 16. These open areas, comprising approximately 550 acres, are delineated on maps available at refuge headquarters, 13 miles northeast of Roswell, New Mexico, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from April 1 through October 15, 1977, inclusive.

(2) The use of boats or floating devices is prohibited.

(3) Fishing hours are from one hour before sunrise until one hour after sunset daily.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through October 15, 1977.

BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE

Sport fishing on the Bosque del Apache National Wildlife Refuge, New Mexico, is permitted only on areas designated by signs as open to fishing. These open areas, comprising 1,800 acres, are delineated on maps available at refuge headquarters, 8 miles south of San Antonio, New Mexico, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on all areas on the refuge extends from May 30 through September 30, 1977, inclusive.

(2) Fishing hours are from one-half hour before sunrise to one-half hour after sunset.

(3) Trotlines and bows and arrows are prohibited.

(4) The use of boats or other floating devices is prohibited.

(5) Fires are prohibited.

(6) Frogging is prohibited.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through September 30, 1977.

OKLAHOMA

SALT PLAINS NATIONAL WILDLIFE REFUGE

Sport fishing on the Salt Plains National Wildlife Refuge, Oklahoma, is permitted only on areas designated by signs as open to fishing. These open areas, comprising 7,800 acres, are delineated on maps available at refuge headquarters, Jet, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from April 15 through October 15, 1977, inclusive, in Great Salt Plains Lake as posted, in Sand Creek, the three main channels of Salt Fork River, and north of the right-of-way of Oklahoma State Highway 11 as posted.

(2) It is illegal to take game fish by any means other than hook and line. Trotlines must be removed from waters at the close of the fishing season.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

SEQUOYAH NATIONAL WILDLIFE REFUGE

Sport fishing on the Sequoyah National Wildlife Refuge, Oklahoma, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising approximately 10,100 acres, are delineated on maps available at refuge headquarters, Sallisaw, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from January 1 through December 31, 1977, inclusive, except for an area of approximately 2,200 acres south of Vian Creek and east of the refuge tour road as posted to be closed during the periods from January 1 through March 31, 1977, inclusive, and from October 1 through December 31, 1977, inclusive.

(2) Some refuge roads leading to waters open to fishing may be closed as posted from January 1 through March 31, 1977, inclusive, and from October 1 through December 31, 1977, inclusive.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

WASHITA NATIONAL WILDLIFE REFUGE

Sport fishing on the Washita National Wildlife Refuge, Oklahoma, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 3,367 acres, are delineated on maps available at refuge headquarters, Butler, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishhing shhall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from April 1 through October 14, 1977, inclusive, except that the eastern shoreline of Foss Reservoir from the Lakeview Recreation Area to the Pitts Creek Recreation Area and the eastern bank of Pitts Creek, itself, shall be open to year-round bank fishing.

(2) Seining is prohibited in all refuge waters.

(3) Trotlines must be removed on or before October 14, 1977 in all refuge waters, except those listed in (1) above as open to year-round bank fishing.

(4) Boats and other floatation devices are prohibited in all refuge waters from October 15 through March 31.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through March 31, 1978.

WICHITA MOUNTAINS WILDLIFE REFUGE

Sport fishing on the Wichita Mountains Wildlife Refuge, Oklahoma, is permitted from January 1 through December 31, 1977, inclusive, in all waters of that portion of the refuge open for recreational uses by the general public, except buoyed swimming areas and areas closed by appropriate signs. These open waters, comprising approximately 550 acres of lakes and one mile of intermittent stream, are delineated on maps available at refuge headquarters, Cache, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Fishing with closely attended poles and lines, including rods and reels, is permitted. The taking of any fish by any other means is prohibited, except the taking of nongame fish from Elmer Thomas Lake by the use of gigs, spears, or other similar devices (but not including bows and arrows) containing not more than three points with no more than two barbs on each point, is permitted.

(2) Fishermen may use one-man inner tube type "fishing floaters" while fishing. Wading while fishing is permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

TEXAS

ANAHUAC NATIONAL WILDLIFE REFUGE

Sport fishing and crabbing on the Anahuac National Wildlife Refuge, Texas, is permitted from January 1 through December 31, 1977, inclusive, but only on the areas designated by signs as open to fishing. These open areas, comprising 2¾ miles of roadside drain and pond edge and 7 miles of East Bay and Oyster Bayou shoreline, are delineated on maps available at refuge headquarters, Anahuac, Texas, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Boats and floating devices may not be used for fishing on inland waters.

(2) Fishing in inland waters is permitted only by ordinary pole and line, rod and reel, or hand-held line. Trotlines, throw lines, set lines, bow and arrows, gigs and spears may not be used in inland waters.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulation, Part 33, and are effective through December 31, 1977.

BRAZORIA NATIONAL WILDLIFE REFUGE

Sport fishing on the Brazoria National Wildlife Refuge, Texas, is permitted from January 1 through December 31, 1977, inclusive, but only on the areas designated by signs as open to fishing. These open areas, comprising 900 acres of inland salt lakes and 18 miles of shoreline, are delineated on maps available at refuge headquarters, Angleton, Texas, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special condition:

(1) Fishing is not permitted on interior waters except Nicks Lake, Salt Lake and Lost Lake.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

BUFFALO LAKE NATIONAL WILDLIFE REFUGE

Due to the lack of water in Buffalo Lake, the Buffalo Lake National Wildlife Refuge, Texas, is closed to fishing for Calendar Year 1977.

HAGERMAN NATIONAL WILDLIFE REFUGE

Sport fishing and frogging on the Hagerman National Wildlife Refuge, Texas, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 3,000 acres, are delineated on maps available at refuge headquarters, 6 miles west of Pottsboro, Texas, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing and frogging on the refuge extends from April 1 through September 30, 1977, inclusive.

(2) Fishing is not permitted from Harris Creek Bridge.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through September 30, 1977.

LAGUNA ATASCOSA NATIONAL WILDLIFE REFUGE

Sport fishing on the Laguna Atascosa National Wildlife Refuge, Texas, is permitted from January 1 through December 31, 1977, inclusive, but only on the area designated by signs as open to fishing. This open area, comprising 140 acres, is limited to the Arroyo Colorado Navigation District (Harlingen) Ship Channel and the banks of the channel as it extends through the refuge. Maps, delineating the area, are available at refuge headquarters, Harlingen, Texas, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Fishing with trotlines is not permitted.

(2) The refuge officer in charge may at his discretion close the fishing area for public safety, to protect wildlife, or to protect government property.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

MULESHOE NATIONAL WILDLIFE REFUGE

Due to the lack of water in fishing lakes, Muleshoe National Wildlife Refuge, Texas, is closed to fishing for Calendar Year 1977.

W. O. NELSON, JR.,
Regional Director,
Albuquerque, New Mexico.

DECEMBER 13, 1976.

[FR Doc.76-37443 Filed 12-20-76;8:45 am]

PART 33—SPORT FISHING

Arapaho National Wildlife Refuge, Colorado

The following special regulation is issued and is effective on December 21, 1976.

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

COLORADO

ARAPAHO NATIONAL WILDLIFE REFUGE

Sport fishing on the Arapaho National Wildlife Refuge, Colorado, is permitted from January 1 through May 31 and August 1 through December 31, 1977, inclusive, on the areas designated by signs as open to fishing. These open areas are delineated on maps available at refuge headquarters, Walden, Colorado 80480, and from the Area Manager, U.S. Fish and Wildlife Service, Federal Building, Room 1426, Salt Lake City, Utah 84111. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

V. CARROL DONNER,
Refuge Manager,
Arapaho National Wildlife Refuge.

DECEMBER 13, 1976.

[FR Doc.76-37444 Filed 12-20-76;8:45 am]

PART 33—SPORT FISHING

Pathfinder National Wildlife Refuge; Wyo.

The following special regulation is issued and is effective on December 21, 1976.

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

WYOMING

PATHFINDER NATIONAL WILDLIFE REFUGE

Sport fishing on all areas of the Pathfinder National Wildlife Refuge, Wyoming, is permitted from January 1 through December 31, 1977, inclusive. These areas, comprising 16,807 acres, are delineated on maps available at refuge headquarters, Walden, Colorado 80480, and from the Area Manager, U.S. Fish and Wildlife Service, Federal Building, Room 1426, Salt Lake City, Utah 84111. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

V. CARROL DONNER,
Refuge Manager,
Pathfinder National Wildlife Refuge.

DECEMBER 13, 1976.

[FR Doc.76-37445 Filed 12-20-76;8:45 am]

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

SUBCHAPTER F—AID TO FISHERIES

PART 253—COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT

Grant-in-Aid Program Changes

Title 50 of the Code of Federal Regulations is amended to conform with the statutory provisions of Pub. L. 94-485, 90 Stat. 2326, which amends the Commercial Fisheries Research and Development Act of 1964, as amended (Pub. L. 88-309, 16 U.S.C. 779-779f), and with Federal Management Circular 74-7.

The purpose of Pub. L. 94-485 is to extend the coverage of the Commercial Fisheries Research and Development Act of 1964, as amended, to enable the Trust Territory of the Pacific Islands to receive Federal financial assistance in carrying out commercial fisheries research and development projects. This law also provides for more efficient management of the grant-in-aid program by modifying some of the administrative procedures involved with the apportionment of the Federal funds. Specifically, it authorizes, upon request, advance payments to the States for approved projects; makes States receiving the six percent maximum apportionment which is prescribed in the Act eligible for any funds voluntarily released by another State; and requires any unused funds appropriated for this program to remain available until

expended to carry out the purposes of the Act as determined by the Secretary.

It is the general policy of the Department of Commerce to allow time for interested parties to take part in the rulemaking process. However, these amendments are administrative in nature. Therefore, the public rulemaking process is waived.

Accordingly, Part 253, Subchapter F, Chapter II of Title 50 of the Code of Federal Regulations is revised to read as set forth below:

Sec.
253.1 Definitions.
253.2 Interpretation of the authorization.
253.3 General provisions.
253.4 Use of funds.
253.5 Environment.
252.6 Assurances.

AUTHORITY: Sec. 8, Commercial Fisheries Research and Development Act of 1964, 78 Stat. (16 U.S.C. 779a–779f), as modified by Reorganization Plan No. 4 of 1970, effective October 3, 1970 (35 FR 15627).

§ 253.1 Definitions.

As used in this part, terms shall have the meaning ascribed in this section.

(a) *Secretary.* The Secretary of Commerce or his authorized representatives.

(b) *Act.* The Commercial Fisheries Research and Development Act of 1964, Pub. L. 88–309, 78 Stat. 197, as amended by Pub. L. 90–551, 87 Stat. 957, Pub. L. 92–590, 86 Stat. 1303, and Pub. L. 94–485, 90 Stat. 2326 (16 U.S.C. 779 et seq.).

(c) *Grantee.* A State agency participating in a grant-in-aid award with the Secretary.

(d) *Application SF–424.* A description of the work to be accomplished, including plans, specification, and estimates, and such other information as may be required by the Secretary.

(e) *Grant-in-aid award.* A written agreement for research and development activities to be carried on as provided by the Act and these regulations. Such award shall set forth the terms and conditions binding upon the grantee and the Secretary, including the objectives, procedures, costs, the award period, and such other provisions as may be appropriate.

(f) *Aquatic plants and animals.* All animals and plants growing or living in or upon water, including finfish, shellfish, and other marine invertebrates, fur seals, whales and other marine mammals, frogs, turtles, and algae.

(g) *Commercial fisheries resources.* Any aquatic plant or animal available or potentially available for harvesting with the primary intent of commercial use as either raw or manufactured products.

§ 253.2 Interpretation of the authorization.

The terms used in the Act to describe the authorization to the Secretary for program and apportionment purposes are construed to be limited to the meanings ascribed in this section.

(a) *Research and development.* The words "research and development" mean program of work, including construction and acquisition, designed to acquire knowledge of commercial fisheries resources and their environment, and to develop and apply methods and techniques to enhance such commercial fisheries resources including their harvest, conservation and utilization.

(b) *Raw fish harvested by domestic commercial fishermen and received within a State.* The words "raw fish harvested by domestic commercial fishermen and received within a State" mean living aquatic plants and animals harvested by individuals, associations, partnerships or corporations resident in and authorized to do business in any State and engaged in harvesting of commercial fisheries resources or the processing and manufacturing of products therefrom. Aquatic plants and animals are received within a State when transferred from a catcher vessel within the jurisdiction of a State or permanently removed from a fish production facility.

(c) *Manufactured and processed fishery merchandise.* The words "manufactured and processed fishery mehchandise" mean commercial fisheries resources or parts thereof after undergoing a change(s) contributing to or achieving a condition of readiness for sale.

(d) *Developing a new commercial fishery.* The words "developing a new commercial fishery" mean activities designed to assist the commercial fishing industry by developing and evaluating methods for the harvest, utilization, and conservation of commercial fisheries resources not commonly utilized.

(e) *Commercial fishery failure due to a resource disaster arising from natural or undetermined causes.* The words "commercial fishery failure to a resource disaster arising from natural or undetermined causes" mean a serious disruption of a commercial fisheries resource affecting present or future productivity. It does not include inability to sell raw fish or manufactured and processed fishery merchandise or compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

(f) *State.* The word "State" means the several States of the United States, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

§ 253.3 General provisions.

(a) *Designation of State agency.* The Governor of each State shall notify the Secretary which agency of the State government is authorized under its laws to regulate commercial fisheries and is designated to submit applications and to enter into grant-in-aid awards. An official of such agency shall certify as to the official(s) authorized in accordance with State law to commit the State to participation under the Act, to sign project documents, and to receive payments. The Secretary shall be advised promptly of any changes made in such authorizations.

(b) *Application.* (1) An application (SF–424) for Federal assistance may be submitted for a State's overall program or for each proposed project for approval by the Secretary. An approved application is the obligating document for Federal funds.

(2) Applications utilizing an allocation of State funds additional to amounts previously allocated by the State for commercial fishery research and development activities shall be preferred over applications utilizing an allocation of State funds which does not involve an increase of State funds dedicated to commercial fishery research and development programs. No application which involves a reduction of State funds previously dedicated to commercial fishery research development will be approved.

(c) *Grant-in-aid award.* (1) After the Secretary has approved an application, activities to be undertaken by the grantee shall be evidenced by a grant-in-aid award (NOAA Form 36–16) executed by the grantee and the Secretary. Such awards may be amended by mutual consent of the parties.

(2) The grant-in-aid award shall contain applicable provisions as required by Federal law and regulations. These provisions are identified in the Grant-in-Aid Handbook, NOAA Handbook No. 22, the most recent version of which may be obtained from the Director, National Marine Fisheries Service.

(d) *Prosecution of work.* (1) The prosecution of work by the grantee shall be performed in a manner acceptable to the Secretary. Unsatisfactory performance shall be cause for the Secretary to withhold payments. Grant-in-aid awards may be terminated or suspended upon determination by the Secretary that satisfactory progress has not been maintained.

(2) All work shall be performed in accordance with applicable State laws except when such laws are in conflict with Federal laws or regulations in which case such Federal law or regulations shall prevail.

(e) *Economy and efficiency of operation.* No grant-in-aid award shall be executed until the grantee has shown to the satisfaction of the Secretary that appropriate and adequate means shall be employed to achieve economy and efficiency, including the avoidance of undesirable duplication, in the completion of a project.

§ 253.4 Use of funds.

(a) *Apportionment of subsection 4(a) funds.* (1) On October 1 of each year, or as soon thereafter as practicable, the Secretary shall notify the respective States of the amount of funds authorized under subsection 4(a) of the Act and apportioned to each State under subsection 5(a) of the Act. Funds appropriated under the Act shall remain available until expended to carry out the purposes of this authorization as determined by the Secretary.

(2) Any State which is unable to use any or all of the funds apportioned to it may voluntarily release all or any part of such apportioned funds. Such release

must be in writing and signed by the State official in charge of the agency designated under § 253.3(a) of these regulations or some other appropriate State official. Any apportioned funds released by a State may be made available by the Secretary to any other State, to supplement the funds apportioned to such other State in the fiscal year in which the released funds were apportioned, when the Secretary determines that such State is able to make prompt and effective use of such funds to carry out the purpose of the Act.

(b) *Use of authorized funds for commercial fisheries resource disaster.* (1) The Secretary shall cause to be published in the FEDERAL REGISTER a notice that a commercial fisheries resource disaster exists at the time such a finding is made.

(2) After such publication, Federal funds may be used for 100 percent of the cost of restoration of commercial fisheries resources if all the funds are obtained from appropriations authorized under subsection 4(b) of the Act.

(c) *Use of funds for developing a new commercial fishery.* (1) Applications related to the development of a new commercial fishery may be approved only after the Secretary determines that such applications will reasonably accomplish the purpose of developing a new commercial fishery.

(2) The Secretary may finance up to 100 percent of the cost of developing a new commercial fishery.

(38 FR 26116, Sept. 18, 1973, as amended at 39 FR 13882, Apr. 18, 1974.)

§ 253.5 Environment.

Projects shall be performed in such manner as to be consistent with the policies set forth in the National Environmental Policy Act of 1969, as amended by Pub. L. 94-83 (89 Stat. 424).

§ 253.6 Assurances.

The State must assure and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds for projects under the Act in accordance with Federal Management Circular 74-7.

Dated: December 16, 1976.

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

[FR Doc.76-37376 Filed 12-20-76;8:45 am]

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

Marine Mammal Protection Act of 1972; Definition of "Optimum Sustainable Population"

The National Marine Fisheries Service recently completed extensive consultations with persons knowledgeable in the field of population dynamics and, as a result of such consultation, proposed in the FEDERAL REGISTER on October 6, 1976 (41 FR 44049) to clarify the term "optimum sustainable population" which appears in Section 3(9) of the Marine Mammal Protection Act.

The Act states that "The term 'optimum sustainable population' means, with respect to any any population stock, the number of animals which will result in the maximum productivity of the population or species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element."

Comments on the proposed clarification were received from six respondents. The Marine Mammal Commission's paper entitled, "The concept of Optimum Sustainable Population" and the "Report of the Workshop on Stock Assessment of Porpoises Involved in the Eastern Pacific Yellowfin Tuna Fishery" (Workshop Report) were also reviewed and considered.

The comments received proposed widely varying levels which broadly described optimum sustainable population as being somewhere from an equilibrium unexploited population level to the level of population that results in maximum productivity. Comments further highlighted the difficulties involved in defining optimum sustainable population as a single value to be used as a basis for all management decisions under the provision of the Act.

Management and protection actions required to maintain optimum sustainable populations will require consideration of factors such as change in the age or sex composition of a population, rate of reproduction, changes in the ecosystem itself, or a limited information base, on an individual case-by-case basis. In cases where sufficient information is unavailable, a conservative approach utilizing an appropriate safety factor may be warranted to ensure that management actions do not disadvantage the populations or species.

A single definition cannot adequately incorporate the wide range of considerations and concepts of Optimum Sustainable Population represented by the comments. The Director, National Marine Fisheries Service, considers it essential to clarify the concept of optimum sustainable population so that this basic element for assessment of management decisions can be uniformly applied. However, in adopting the following definition, the Director expects that modification might be necessary as knowledge and understanding of the concept of optimum sustainable population evolve.

Dated: December 16, 1976.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

Section 216.3 of 50 CFR, Chapter II is amended by addition, after definition of "native village or town" and before the definition of "pregnant," of the following:

§ 216.3 Definitions.

* * * * *

Optimum sustainable population is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

* * * * *

[FR Doc.76-37416 Filed 12-20-76;8:45 am]

proposed rules

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

CIVIL SERVICE COMMISSION

[5 CFR Part 295]

COMMISSION MEETINGS

Public Observation

To implement "The Government in the Sunshine Act," Public Law 94-409, the Civil Service Commission is proposing for public comment the following regulations under Part 295. It is the policy of the United States Civil Service Commission that the public is entitled to the fullest practicable information regarding the Commission's decision-making process. In keeping with the letter and spirit of the Act, all Commission meetings will be open to the public as long as such is consistent with protecting the rights of individuals and the ability of the Commission to carry out its responsibilities.

Persons interested in commenting on the proposed regulations may submit written statements to William C. Duffey, room 7F10, U.S. Civil Service Commission, 1900 E Street, NW., Washington, D.C. 20415, no later than January 21, 1977.

Dated: December 21, 1976.

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

Part 295 is added to Title 5 as follows:

PART 295—PUBLIC OBSERVATION OF COMMISSION MEETINGS

Subpart A—General Provisions

Sec.

295.101 Purpose.
295.102 Definitions.
295.103 Applicability and scope.
295.104 Open meeting policy.

Subpart B—Procedures Governing Decisions About Meetings

295.201 Decision to hold meeting.
295.202 Provisions under which a meeting may be closed.
295.203 Decision to close meeting.
295.204 Public availability of recorded vote to close meeting.
295.205 Public announcement of meeting.
295.206 Providing information to the public.
295.207 Change in meeting plans after public announcement.
295.208 Meetings for extraordinary agency business.
295.209 Notice of meeting in FEDERAL REGISTER.

Subpart C—Conduct of Meetings

295.301 Meeting place.
295.302 Role of observers.

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Subpart A—General Provisions

§ 295.101 Purpose.

This part sets forth the regulations under which the Commission shall engage in public decisionmaking processes, make public announcement of meetings at which a quorum of or all Commission members consider and determine official Commission actions, and inform the public of which meetings they are entitled to observe.

§ 295.102 Definitions.

In this part:

(a) "Meeting" means the deliberations of at least two Commission members where such deliberations determine or result in the joint conduct of official Commission business.

(b) "Member" means one of the Commissioners of the Civil Service Commission who is appointed to that position by the President with the advice and consent of the Senate.

§ 295.103 Applicability and scope.

This part applies to deliberations of at least two Commission members. Excluded from coverage of this part are meetings of interagency committees whose composition includes Commission members and deliberations of Commission officials who are not members.

§ 295.104 Open meeting policy.

The public is entitled to the fullest practicable information regarding the decisionmaking processes of the Commission. Commission meetings involving deliberations which determine or result in the joint conduct or disposition of official Commission business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Commission's ability to carry out its responsibilities. Meetings or portions of meetings may be closed to public observation only if closure can be justified under one of the provisions set forth in § 295.202 of this part.

Subpart B—Procedures Governing Decisions About Meetings

§ 295.201 Decision to hold meeting.

When Commission members make a decision to hold a meeting, the proposed meeting will ordinarily be scheduled for a date no earlier than eight days after the decision to allow sufficient time to give appropriate public notice. At the time a decision is made to hold a meeting, the time, place, and subject matter of the meeting will be determined, as well as whether the meeting is to be open or closed to the public.

§ 295.202 Provisions under which a meeting may be closed.

(a) A meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Commission determines that such portion or portions of its meeting or disclosure of such information is likely to:

(1) disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) 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, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or

condition reports prepared by, on behalf of, or for the use of an agency repsonsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(i) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action.

except that subparagraph (ii) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(b) The Commission may exercise its authority to open to public observation a meeting which could be closed under one of the provisions of § 295.202(a), if it would be in the public interest to do so.

§ 295.203 Decision to close meeting.

(a) Commission members may decide to close to public observation a meeting or a portion or portions thereof, or to withhold information pertaining to such meeting, only if at least two members vote on the record to take such action. No proxy votes shall be allowed. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. If a decision is made to close a portion or portions of a meeting or a series of meetings, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

(b) For every meeting or portion thereof which Commission members have voted to close, the General Counsel of the Civil Service Commission shall publicly certify that, in his or her opinion, the meeting may properly be closed to the public. In addition, the General Counsel shall state each relevant exemptive provision as set forth in § 295.202(a). A copy of the General Counsel's certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and listing the persons present, shall be retained by the Commission.

(c) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 295.202(a)(5), (6), or (7), the Commission members, upon request of any of the Commissioners, shall decide by recorded vote whether to close such portion. If a closure decision is made, the Commission shall prepare a full written explanation of the closure action together with a list naming all persons expected to attend the meeting and identifying their affiliation.

§ 295.204 Public availability of recorded vote to close meeting.

Within one day of any vote taken on a proposal to close a meeting, the Commission shall make publicly available a record reflecting the vote of each member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Commission shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 295.205 Public announcement of meeting.

(a) Except as provided in §§ 295.207 and 295.208, the Commission shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting;

(2) Whether the meeting is to be open or closed; and

(3) Name and telephone number of agency official who will respond to requests for information about the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal the information that the meeting itself was closed to protect, the subject matter shall not be announced.

§ 295.206 Providing information to the public.

Information available to the public in accordance with §§ 295.204 and 295.205 shall be posted in the lobby of the Civil Service Commission Building, 1900 E Street, N.W., Washington, D.C. Individuals or organizations interested in obtaining copies of information available under § 295.204 may request same under provisions set forth in §§ 295.402 and 295.404. Individuals or organizations having a special interest in activities of the Commission may request the Executive Assistant to the Commissioners to place them on a mailing list for receipt of information available under § 295.205.

§ 295.207 Change in meeting plans after public announcement.

(a) Following public announcement of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

(b) Following public announcement of a meeting, the subject matter of a meeting or the determination to open or close a meeting may be changed only if both of the following conditions are met:

(1) There must be a majority, recorded vote of the Commission members that Commission business requires the change and that no earlier announcement of such changes was possible; and

(2) There must be a public announcement of the change and of the individual Commission members' votes at the earliest practicable time.

§ 295.208 Meetings for extraordinary agency business.

Where agency business so requires, Commission members may decide by majority, recorded vote to schedule a meeting for a date earlier than eight days after the decision. Such a decision would obviate the general requirement for a public announcement at least one week before the scheduled meeting. At the earliest practicable time, however, the Commission will announce publicly the time, place, and subject matter of the meeting, whether the meeting is to be open or closed, and the name and telephone number of an agency official who will respond to requests for information about the meeting.

§ 295.209 Notice of meeting in Federal Register.

Immediately following each public announcement required by this subpart, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER:

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of an agency official who will respond to requests for information about the meeting.

Subpart C—Conduct of Meetings

§ 295.301 Meeting place.

Meetings will be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, alternative facilities will be made available.

§ 295.302 Role of observers.

The public may attend open meetings for the sole purpose of observation. Observers may not participate in meetings unless expressly invited or create distractions to interfere with the conduct and disposition of Commission business. When meetings are partially closed, observers will leave the meeting room upon request so that discussion of matters ex-

empt under provisions of Subpart B, § 295.202, may take place.

Subpart D—Maintenance of Meeting Records

§ 295.401 Requirements for maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public must be made and retained for two years or for one year after the conclusion of the Commission proceeding involved in the meeting. The record of any portion of a meeting closed to the public shall be a verbatim transcript or electronic recording. In lieu of a transcript or recording, a comprehensive set of minutes may be produced if the closure decision was made pursuant to § 295.202(a)(8), (a)(9)(i), or (a)(10).

(b) If minutes are produced, such minutes shall fully and clearly describe all matters discussed, provide a full and accurate summary of any actions taken and the reasons expressed therefor, and include a description of each of the views expressed on any item. The minutes must also reflect the vote of each member on any roll call vote taken during the proceedings and identify all documents produced at the meeting.

(c) The following documents produced under provisions of § 295.203(b) shall be retained by the agency as part of the transcript, recording, or minutes of the meeting:

(1) Certification by the General Counsel that the meeting may properly be closed; and

(2) Statement from the presiding officer of the meeting setting forth the date, time, and place of the meeting and listing the persons present.

§ 295.402 Availability of records to the public.

(a) The Commission shall make promptly available to the public the transcript, electronic recording, or minutes maintained as a record of a closed meeting, except for such information as may be withheld under one of the provisions of § 295.202(a). Copies of such transcript, minutes, or transcription of an electronic recording, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) The nonexempt parts of transcripts, minutes, and electronic recordings shall be in the official custody of the Executive Assistant to the Commissioners. Appropriate facilities and equipment will be made available to any person who makes a request to review these records.

(c) Requests for copies of nonexempt parts of transcripts, minutes, or transcriptions of electronic recordings shall be directed to the Executive Assistant to the Commissioners. Such requests shall identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount.

§ 295.403 Requests for records under Freedom of Information and Privacy Acts.

Requests to review or obtain copies of records other than transcripts, electronic recordings or minutes of a meeting will be processed under the Freedom of Information Act (5 U.S.C. 552) or, where applicable, the Privacy Act (5 U.S.C. 552a).

§ 295.404 Copying and transcription charges.

(a) The Commission will charge fees for furnishing records at the rate of ten cents per page for photocopies and at the actual cost of transcription. When the anticipated charges exceed $50, a deposit of 20 percent of the amount anticipated must be made within 30 days. Requested information will not be released until the deposit is received. Fees shall be paid by check or money order made payable to the United States Civil Service Commission.

(b) The Executive Assistant to the Commissioners has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Subpart E—Administrative Review

§ 295.

Any person who believes a Commission action governed by this part to be contrary to the provisions of this part may file an objection in writing with the Executive Assistant to the Commissioners. Wherever possible, the Executive Assistant will respond within two working days to objections concerning decisions to close meetings or portions thereof. Responses to objections concerning matters other than closed meetings will be made within ten working days.

Subpart F—Judicial Review

§ 295.

Any person may bring an action in a United States District Court to challenge or enforce the provisions of this part or the manner of their implementation. Such action may be brought prior to or within 60 days after the meeting in question, except that if proper public announcement of the meeting is not made, the action may be instituted at any time within 60 days after such announcement is made. An action may be brought where the Commission meeting was or is to be held or in the District of Columbia.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 225]

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Proposed Revised Regulations

The Food and Nutrition Service (FNS) hereby publishes proposed regulations for the Summer Food Service Program for Children as required by section 13(f) of the National School Lunch Act, as amended. These proposed regulations are essentially a revision of the regulations published March 3, 1976 (41 FR 9533). They represent the results of an evaluation of the administration at all levels of the Summer Food Service Program for Children during fiscal year 1976. The following is an enumeration of the major changes which would be effected if this proposal is adopted.

(1) Program experience has demonstrated that sponsors who draw attendance from widespread areas have had difficulty establishing Program eligibility based on the requirement that sponsors must serve children from areas of economic need, defined as geographic areas in which one-third of the children are eligible for free or reduced price meals under the National School Lunch or School Breakfast Programs. Although these sponsors serve children from areas of economic need, the fact that attendance is drawn from widespread areas makes it difficult to demonstrate eligibility. In recognition of this problem and in an effort to ensure that Program benefits are not denied eligible children FNS proposes that sponsors which provide a regularly scheduled organized cultural or recreational activity for enrolled children for whom a daily attendance register is maintained shall be permitted to demonstrate eligibility by family-size and income data on individual children which indicates that one-third of the children enrolled at the site are eligible for free and reduced price meals.

(2) State agencies and FNS Regional Offices (FNSROs), have been given discretionary authority in the amount of advance funds to be made available to sponsors but in no case shall the amount made available to sponsors participating in the prior fiscal year exceed 65 percent of the Program funds actually expended by that sponsor in the same calendar month in the prior year. The proposed dates for making the second and third payments of advance funds to sponsors have been changed to July 15 and August 15 and sponsors will be required to request each advance payment from the State agency, or FNSRO where applicable, at least 30 days prior to such payments. Proposed changes with respect to advance funding are intended to provide for proper administrative control of such funds. It has been demonstrated that State agencies, FNSROs and sponsors have had difficulty in projecting the size of the Program at all levels. Under the circumstances, the advance of Program funds based on other than known factors is felt to be inconsistent with responsible administration.

(3) It is proposed that each participating sponsor be limited to a maximum number of 200 food service sites and a total average daily attendance at all sites of 50,000 children. In addition, State agencies and FNSROs shall not allow a sponsor to operate any site which expects to serve more than 300 children on an average day, until the administering agency visits each such site and evalu-

ates it as to its capability for serving the projected number of children. Experience dictates that there is a point beyond which even a capable administrative organization cannot hope to exercise proper control. The Summer Program by its very nature presents more than the average number of administrative pitfalls and requires a concentrated administrative effort.

(4) In an effort to implement more effective and necessary controls at all administrative levels, FNS is proposing a limit on the length of meal service, by meal type. Two hours shall be alloted for lunches and suppers; one hour for breakfasts and supplements. Meals served outside the approved time periods will not be eligible for reimbursement. Additionally, sponsors will be prohibited from beginning the supper meal any later than 6:00 p.m. These restrictions permit adequate supervisory control and at the same time should not interfere with a well organized food service operation.

(5) Several additions to the section of the regulations dealing with sponsor/food service management company activities are proposed. Of primary significance is the requirement that State agencies develop and require the use of a standard sponsor/food service management company contract. Other provisions relate to the bid procedure and are geared to ensuring the propriety of the competitive bid process. Numerous violations of both the spirit and the letter of previous regulatory provisions dealing with this area of Program operations dictate that considerable administrative attention needs to be paid here. These proposed changes are intended to assist administering agencies in this regard.

(6) It is proposed that all service institutions applying for the Program must demonstrate financial and administrative capability for Program operations and must provide an ongoing year-round service to the community which they propose to serve. It is recognized that sponsors who have operated successful programs in the past have been not only capable and experienced but also committed to the area and the people for whom a food service is provided. State agencies may require bonding of service institutions desiring to participate in the Program.

(7) Sponsors approved for participation in the Program must agree to visit all of their sites during the first week of Program operations and thereafter to review all sites at least once during the first four weeks of operation. FNS believes that the nature of the Program is such that communication with and monitoring of food service sites by sponsors is essential to successful Program operations. It has been observed that many problems at the site level could have been avoided or resolved by conscientious sponsor monitoring.

(8) Sponsors which expect to receive more than $50,000 in Program payments must contract with a CPA audit firm or individual CPA to perform a fiscal audit on their Program operations and must submit a copy of that audit with their final Claim for Reimbursement. Formerly, this requirement applied to sponsors which expected to earn more than $30,000. The increase to $50,000 is based on preliminary data from the fiscal year 1976 Program which indicate that the average size program is somewhat larger than had been expected.

(9) The donation of USDA commodities will be limited to sponsors which either prepare the meals to be served at their sites or enter into an agreement with a school or school district for the preparation of their meals. Experience shows that information regarding the amount and types of commodities available under the Program cannot be disseminated in sufficient time to be considered by sponsors as they contract with food service management companies. In addition, the kinds of commodities frequently made available are not compatible with the type of meal usually prepared by food service management companies.

(10) FNS proposes to eliminate start-up funds. Preliminary information indicates that only a fraction more than one percent of sponsors made use of these funds during fiscal year 1976. FNS recognizes the fact that this small percentage is partially due to the discretionary authority given to administering agencies over these funds. The majority of State agencies and FNSROs who have stated their opinions concerning these funds feel that the Summer Program by its less than stable nature does not lend itself to this type of funding.

(11) Finally, FNS proposes to offer guidelines for use by State agencies and FNSROs to assist them in evaluating potential sponsors. Specifically, criteria have been set forth over and above basic eligibility standards by which an administering agency might determine a potential sponsor to be unfit for Program operations. These guidelines are minimum and are related to prior performance in the Program. It is expected that administering agencies will use these guidelines as a base on which to scrutinize more closely potential sponsors and to refuse participation to those potential sponsors which appear to be unable to perform at an acceptable level.

In a related area it is apparent that there has been some confusion in the past as to the proper role of administering agencies in the selection of Program sponsors. FNS is suggesting that potential sponsors be evaluated on past performance and/or on a demonstrated capability for administration and fiscal responsibility. A definition of "eligible" including these criteria should assist administering agences in their evaluaton process.

Interested persons are invited to comment on the proposed regulations. Written views, arguments and data submitted or postmarked no later than January 14, 1977 will be assured of consideration in the promulgation of final Summer Food Service Program for Children regulations. Comments should be submitted to William G. Boling, Manager, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of all written comments received will be available for inspection by the public during normal business hours in room 3405 Auditors Building, 14th and Independence Avenues, S.W., Washington, D.C.

FNS proposes to revise 7 CFR Part 225 to read as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Subpart A—General

Sec.
225.1 General purpose and scope.
225.2 Definitions.
225.3 Administration.

Subpart B—State Agency and Regional Office Provisions

225.4 Criteria for approval of service institutions as sponsors.
225.5 Responsibilities of State agencies and FNSROs.
225.6 Payments to State agencies and use of Program funds.
225.7 Distribution and use of State administrative funds.
225.8 Program management and administration plan.

Subpart C—Sponsor Provisions

225.9 Requirements for participation.
225.10 Food service requirements.
225.11 Food service management companies.
225.12 Program payments.
225.13 Program payment procedures.
225.14 Claims against sponsors.

Subpart D—Miscellaneous Provisions

225.15 Procurement provisions.
225.16 Prohibitions.
225.17 Other provisions.
225.18 Program information.

AUTHORITY: Sec. 13, Pub. L. 94-105, 89 Stat. 515 (42 U.S.C. 1761). Sec. 7, Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1751). Sec. 8, Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1773).

Subpart A—General

§ 225.1 General purpose and scope.

This part announces the policies and prescribes the regulations under which the Secretary will carry out a program to assist States through grants-in-aid and other means, to initiate, maintain, and expand nonprofit food service programs for children in service institutions, as defined herein, during the summer months and at other approved times. Payments will be made by States to service institutions in connection with the cost of operating a food service program, or if any State is unable to disburse funds to any service institution in the State, payments will be made by the Department to all service institutions in the State.

§ 225.2 Definitions.

(a) "Act" means the National School Lunch Act, as amended.

(b) "Administrative costs" means Program costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program (excluding interest costs).

(c) "Area" means the geographic area from which a site draws its attendance.

(d) "Areas in which poor economic conditions exist" means areas in which at least 33⅓ percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program.

(e) "CND" means the Child Nutrition Division of the Food and Nutrition Service of the Department.

(f) "Children" means persons 18 years of age or under.

(g) "Cost of obtaining food" means costs related to obtaining agricultural commodities and other food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

(h) "Continuous school calendar" means a situation in which all or part of the student body of a school or school district are on a vacation for periods of 15 continuous school days or more during the period October through April.

(i) "Department" means the U.S. Department of Agriculture.

(j) "Fiscal year" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(k) "FNS" means the Food and Nutrition Service of the Department.

(l) "FNSRO" means the appropriate FNS Regional Office.

(m) "Food service management company" means a commercial enterprise which is or may be contracted with, by a sponsor to manage, or to prepare, or to deliver, or to serve, or any combination thereof, utilized meals for children.

(n) "Income accruing to the Program" means all monies (other than Program payments) received from Federal, State, intermediate, or local governments; income from food sales to adults; and any other income, including cash or in-kind donations or grants.

(o) "Meals" means food which is served to children during their attendance at a food service site and which meets the nutritional requirements set out in this part.

(p) "Milk" means fluid types of flavored or unflavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used.

(q) "Needy children" means children from families whose income is not above the Secretary's income poverty guideline.

(r) "Net program costs" means the cost incurred by a sponsor in connection with the operation of a food service under the Program, including (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) the cost of nonfood supplies, (4) rental and use allowances of equipment and space, and (5) administrative costs but excludes costs of the purchase of land, acquisition or construction of buildings, or alterations of existing buildings and excludes interest costs, less income accruing to the program.

(s) "OA" means the Office of Audit of the Department.

(t) "OI" means the Office of Investigation of the Department.

(u) "Private nonprofit" means tax exempt under the Internal Revenue Code of 1954, as amended.

(v) "Program" means the Summer Food Service Program for Children authorized by section 13 of the Act.

(w) "Program funds" means financial assistance made available to State agencies and FNSROs for the purpose of making Program payments.

(x) "Program payments" means financial assistance in the form of advance payments or reimbursement paid or payable to sponsors for Program costs as defined in paragraph (r) of this section.

(y) "Secretary" means the Secretary of Agriculture.

(z) "Service institution" means a nonresidential public or private nonprofit institution or a residential public or private nonprofit summer camp that conducts, during the months of May through September, a regularly scheduled program for children at site locations where organized recreational activity or food service are provided.

(aa) "Site" means a physical location at which a service institution provides or will provide a food service for children.

(bb) "Sponsor" means a service institution which has entered into an agreement with a State agency or FNSRO to conduct a food service under this part.

(cc) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(dd) "State agency" means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program.

(ee) "State educational agency" means, as the State legislature may determine, the chief State school officer (such as the State superintendent of public instruction, Commissioner of Education, or similar officer) or a board of education controlling the State department of education.

§ 225.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, CND shall be responsible for Program administration.

(b) Within the States, responsibility for the administration of the Program shall be in the State agency, except that FNSRO shall administer the Program in any State where the State agency is not permitted by law or is otherwise unable to disburse Federal funds paid to it under the Program to any sponsor in the State. References in this part to "FNSRO where applicable" are to FNSRO as the agency administering the Program within a State.

(c) Each State agency desiring to take part in the Porgram shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. Such agreement shall cover the operation of the Program during the period specified therein and may be extended by consent of the parties.

Subpart B—State Agency and Regional Office Provisions

§ 225.4 Criteria for approval of service institutions as sponsors.

(a) The State agency, or FNSRO where applicable, shall establish minimum criteria for approval of service institutions to become sponsors under the Program, and shall determine the eligibility of service institutions applying for participation in the program. No service institution shall be approved unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;

(2) Has adequate supervisory and operational personnel for overall monitoring and management of each food service site including adequate personnel to visit all food service sites at least once in the first week of operation under the Program and to take promptly such actions as are necessary to correct deficiencies found at the time of the initial visit, and to review food service operations at every site at least once during the first four weeks of Program operations, and thereafter to maintain a reasonable level of site monitoring;

(3) Provides an ongoing year-round service to the community which it proposes to serve under the Program;

(4) Agrees to maintain and has the capability of maintaining children on site while meals are consumed;

(5) Certifies that all sites where it plans to conduct a food service have been visited and have the capability and the facilities for the meal service planned for the number of children anticipated to be served;

(6) Is a private nonprofit entity or a public entity;

(7) Provides documentation that its activity or food service serves an area in which poor economic conditions exist or, if applicable under § 225.9(e), documentation on an individual child basis that at least one-third of the children enrolled in each session of its operation are eligible for free or reduced price school meals;

(8) Agrees to held training sessions for its own personnel and site personnel with regard to Program duties and responsibilities, and to allow no site to operate until its personnel have attended such training sessions.

(9) Agrees to provide for an audit to be performed on its food service by an independent Certified Public Accountant under any Program agreement for which it will receive over $50,000 in Program payments and to submit a copy of the letter of engagement with an acounting firm or individual which is to conduct the audit.

(b) The State agency, or FNSRO where applicable, shall not approve the application of any service institution, identifiable through its corporate or other organization or otherwise, as a sponsor which participated in the Program during any previous fiscal year and which was found to be seriously deficient in its Program operations. Prior to issuance of a final decision regarding nonapproval, the State agency, or FNSRO where applicable, shall provide applicants the opportunity to refute findings regarding Program deficiencies and to show cause why applications should be approved. Deficiencies which are grounds for nonapproval include, but are not limited to, any of the following:

(1) Non-compliance with the bid procedure and contract requirements are outlined in Program regulations (7 CFR Part 225) dated March 3, 1976;

(2) The knowing submission of false information to the State agency, or FNSRO where applicable;

(3) Failure of the sponsor to return to the State agency, or FNSRO where applicable, any start-up or advance funds which exceed the amount earned by the sponsor for serving eligible meals, or failure to submit all Claims for Reimbursement in any prior year;

(4) Program violations at a majority of the sponsor's food service sites which include, but are not limited to, the following:

(i) Non-compliance with the between-meal time requirements,

(ii) Failure to maintain adequate records,

(iii) Failure to adjust meal orders to conform to variations in the number of participating children,

(iv) The simultaneous service of more than one meal to each child, and

(v) The claiming for Program reimbursement of meals served to adults.

(c) The State agency, or FNSRO where applicable, shall develop, in accordance with the requirements of this part and such other guidance as may be furnished by the Department, a site information sheet, on which service institutions applying to become sponsors under the Program shall provide, for each site at which a food service is proposed, information to demonstrate or describe:

(1) An organized and supervised system for serving meals to attending children;

(2) The types of meals to be served and the times of service;

(3) Arrangements, within acceptable standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and if there are excess meals, arrangements for storing them until they are served;

(4) Arrangements for food service during periods of inclement weather;

(5) Access to a means of communication for making adjustments as needed in the number of meals delivered in accordance with the number of children attending daily at each site;

(6) The geographical area to be served by the site;

(7) The extent to which the site draws attendance from an area in which poor economic conditions exist or, if applicable under § 225.9(e), that at least one-third of the children enrolled in each session of operation are eligible for free or reduced price school meals.

(d) The State agency, or FNSRO where applicable, shall when evaluating proposed sites ensure that:

(1) The area served by the proposed site is one in which poor economic conditions exist; or if applicable under § 225.9(e) that at least one-third of the children enrolled are eligible for free or reduced price meals.

(2) The number of meals, by type, proposed to be served to children at the site does not exceed the number of children residing in the area to be served or the number enrolled.

(3) The area which the site proposes to serve is not served in whole or in part by another proposed site: *Provided, however,* That more than one site may be approved to serve the same area if it can be demonstrated to the satisfaction of the State agency, or FNSRO where applicable, that each proposed site will serve children not served by any other site in the area and that the total number of meals, by type, served to children at all sites shall not exceed the number of children residing in the area.

(e) The State agency, or FNSRO where applicable, shall not approve any site with a proposed average daily attendance of more than 300 children until the State agency, or FNSRO where applicable, visits each site to evaluate its capability of serving the number of children expected. No service institution shall be approved to operate more than 200 sites. No service institution shall be approved to serve an average daily attendance of more than 50,000 children. Service institutions which document site eligibility on the basis of enrolled children shall be approved for the service of meals only to children enrolled.

(f) The State agency, or FNSRO where applicable, shall not approve the service of more than one meal per day at any food service site unless each type of meal is delivered separately within one hour of the beginning of the meal service or facilities capable of holding hot or cold meals within the temperatures required by State or local health regulations are available at such site.

(g) The State agency, or FNSRO where applicable, shall use the following order of institutional priority in approving service institutions in the same area for participation in the Program as sponsors:

(1) Public or nonprofit private school with food service facilities;

(2) Public service institutions which utilized local school food facilities for the preparation of meals;

(3) Private service institutions which utilize local school food facilities for the preparation of meals;

(4) Other public service institutions; and

(5) Other private service institutions which have demonstrated ability for successful program operations based on prior Program participation and which provide an organized activity for children.

(h) The State agency, or FNSRO where applicable, in addition to the institutional priorities established in § 225.4 (g) shall consider the following Program factors in approving service institutions in the same area for participation in the Program as sponsors:

(1) Prior service through related programs to needy children in the area to be served.

(2) Preparation of meals at the food service sites.

(3) Percentage of needy children in the area to be served.

§ 225.5 Responsibilities of State agencies and FNSROs.

(a) *Program assistance.* Each State agency shall provide Program assistance as follows:

(1) Each State agency shall provide consultive, technical, and managerial personnel to administer the Program and monitor performance and to measure progress towards achieving Program goals. Such personnel shall be available in sufficient time to properly plan and implement the Program.

(2) Program assistance shall include visits prior to the approval of the application, to all applicants which have not previously participated in the Program and to all applicants which will receive more than $50,000 in Program payments, and reviews, during the first 4 weeks of operation, of all sponsors, and of 15 percent of the sites of such sponsors which operate 10 or more sites, to ensure compliance with Program regulations and with the Department's nondiscrimination regulations (Part 15 of this Title), issued under Title VI of the Civil Rights Act of 1964. In addition, 80 percent of the remaining sponsors and 10 percent of the food service sites of such remaining sponsors shall be reviewed at least once during the period of the Program agreement.

(3) Documentation of Program assistance shall be maintained on file by the State agency.

(b) *Accounting procedures for sponsors.* Each State agency shall establish

accounting practices under which sponsors shall report the information required in this part. The system shall be such as to permit determination of the operating balances available to sponsors.

(c) *Payment of claims.* A State agency may make full or partial reimbursement upon receipt of a Claim for Reimbursement from a sponsor, but shall first make any necessary adjustments in payments.

(d) *Sponsor/food service management company contract.* Each State agency shall develop a standard form of contract for use by sponsors and food service management companies as provided for in § 225.11.

(e) *Advance payment procedure.* Each State agency shall establish a procedure whereby sponsors may apply for advance Program payments as provided for in § 225.13.

(f) *Use of school food service facilities.* State agencies shall make a positive effort to encourage the use of school food service facilities to the maximum extent feasible in the preparation, service and delivery of meals under the Program.

(g) *Application deadline date.* Each State agency shall establish a date by which all service institutions wishing to participate in the Program shall submit a written application.

(h) *Meal service restriction.* State agencies shall immediately restrict to one meal service per day any site determined by it, or by FNSROs to be in violation of § 225.10(a) and all sites under a sponsor if more than 10 percent of the sponsor's sites are determined by it, or FNSRO, to be in violation of § 225.10(a).

(i) *Plentiful foods.* State agencies shall provide sponsors with information on foods available in plentiful supply, including those so designated by the Department.

(j) *Records and reports.* (1) Each State agency shall maintain current accounting records of Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and expenditures for operating costs. The records may be kept in their original form or on microfilm, and shall be retained for a period of three years after the date of submission of the final Financial Status Report, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of any issues raised by the audit.

(2) Each State agency shall report information on the use of Program funds and on Program operations to FNS on forms provided by FNS, as instructed by FNS.

(k) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. The Department shall make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(l) *Commodity distribution information.* If the State agency is other than the agency of the State which handles the distribution of food commodities donated by the Department, a list of sponsors which are to receive food commodities, with accompanying information on the average daily number of meals to be served by such sponsors, shall be prepared not later than June 1 of each year by the State agency. Such a list shall contain only the names of sponsors which will prepare the meals to be served at its sites and the names of sponsors which have entered into an agreement with a school or school district for the preparation of meals to be served under the Program. This information shall be forwarded to the agency of the State which handles the distribution of donated commodities. The State agency shall be responsible for promptly revising the information to reflect additions or deletions of sponsors and for providing such adjustments in participation data as are determined necessary by the State agency. Availability of commodities for use by sponsors shall be summarized and announced by the State agency at an early date prior to the development of menu cycles.

(m) *Training.* The State agency shall provide training for the supervisory personnel of all sponsors, at locations convenient to the areas of operation, prior to the opening of the Program and shall assist sponsors in training site personnel.

(n) *Audit.* The State agency shall provide sponsors whose total Claims for Reimbursement will exceed $50,000 with guidance to enable them to comply with the requirements set out in § 225.9(h).

(o) *Procurement provisions.* State agencies shall require sponsors to adhere to the procurement provision set forth in § 225.15 of this Part.

(p) *Management evaluations and audits.* (1) Each State agency, or FNSRO where applicable, shall ensure that the requirements of § 225.9 are met and shall provide sponsors with an audit guide to be used in the conduct of the audit required by § 225.9(h).

(2) Each State agency, or FNSRO where applicable, shall provide for audits of all sponsors not covered under § 225.9(h) to be made with reasonable frequency. The audits may be made by State agency internal auditors, State Auditors General, State Controllers, or other comparable State audit groups, or by Certified Public Accountants.

(3) Each State agency, or FNSRO where applicable shall coordinate its monitoring review findings under § 225.5(a)(2) and the audit reports provided for under § 225.9(h).

(4) While OA shall rely to the fullest extent feasible upon State sponsored audits, it shall, whenever it considers necessary, (i) make audits on a Statewide basis, (ii) perform on-site test audits, and (iii) review audit reports and related working papers of audits performed by or for State agencies.

(5) State agencies shall provide FNS and OA with full opportunity to conduct management evaluations (including visits to sponsors) and audits of all operations of the State agency under this part. Each State agency shall make available its records, including records of the receipt and expenditure of funds upon a reasonable request by FNS or OA. OA shall also have the right to make audits of the records and operations of any sponsor.

(6) Use of audit guides available from OA is encouraged. When these guides are utilized, OA will coordinate its audits with State-sponsored audits to form a network of intergovernmental audit systems.

(7) In making management evaluations or audits for any fiscal year, the State agency, FNS, or OA, may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations or procedure as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims for the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

(q) *Compliance.* State agencies shall require sponsors to comply with applicable provisions of this part.

(r) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part.

(s) *Commercial performance bonds.* The State agency may require service institutions wishing to participate in the Program to obtain commercial performance or fidelity bonds.

(t) *FNSRO responsibilities.* FNSRO shall, in the States in which it administers the Program, assume all of the responsibilities of State agencies set forth in this section.

§ 225.6 Payments to State agencies and use of Program funds.

(a) Not later than May 1, June 1 and July 1 of each fiscal year the Secretary shall make available to each State agency by Letter of Credit an advance payment of Program funds for meals to be served under the Program in the following month in an amount no less than the total payment made to the State agency for meals served in the same calendar month of the preceding calendar year or 65 per centum of the amount estimated by the State agency on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the following month, whichever is the greater. For sponsors who operate under a continuous school calendar, the Secretary shall make advance payments of Program funds to State agencies in an amount of 65 per centum of the amount estimated to be needed by such sponsor within the State by Letter of Credit on the first day of the month prior to the month during which

the food service will be conducted. The Secretary shall make available any remaining Program funds due no later than 60 days following receipt of valid claims from sponsors by the State agency.

(b) Program funds shall be used by State agencies, or FNSROs where applicable, to make Program payments to sponsors in connection with meals served to children in accordance with the provisions of this part.

(c) The State agency shall release to FNS any Program funds which are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(d) The State agency, or FNSRO where applicable, may with the approval of FNS, use in carrying out special developmental projects an amount up to 1 percent of Program payments made in any fiscal year.

§ 225.7 Distribution and use of State administrative funds.

(a) For each fiscal year, the Secretary shall pay to each State agency for administrative expenses incurred in the Program, an amount equal to 2 percent of the total Program funds disbursed to the State: *Provided, however,* That no State shall receive less than $10,000 for each fiscal year unless the funds distributed to that State for that fiscal year total less than $50,000.

(b) State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available.

(c) Not later than October 1 of each fiscal year, the Secretary shall make available to each State agency by Letter of Credit an initial allocation of State administrative funds in an amount not to exceed one-third of 2 percent of the Program funds properly payable to such State agency for a summer food service in the prior fiscal year, or one-third of $10,000, whichever is applicable. For States which did not receive any Program funds during the prior fiscal year, the amount to be made available by October 1 of each fiscal year shall be determined by the Department.

(d) An additional amount of State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan provided for in this part. The amount of such funds, plus the initial allocation, shall not exceed three-fourths of 2 percent of the Program funds estimated to be needed for Program payments, or three-fourths of $10,000, whichever is applicable. The balance of the State administrative funds needed by a State, not to exceed 2 percent of the Program funds paid or estimated to be payable to the State for the current fiscal year, or $10,000 whichever is applicable, shall be paid to the State not later than July 15 of each fiscal year.

(e) Each State agency shall report to the Department information on the use of Program funds and State administrative funds on a form provided by FNS, not later than November 30 of each fiscal year. The Department shall then make any adjustments necessary prior to the next payment of State administrative funds.

§ 225.8 Program management and administration plan.

(a) Not later than February 15 of each fiscal year, each State agency shall submit to FNS for approval, a Program management and administration plan for that fiscal year. Approval of the plan by FNS shall be a prerequisite to the payment of Program funds, or to the donation by the Department of any commodities for use in the Program. The plan shall include as a minimum:

(1) How the State plans to use Program funds and funds from within the State to the maximum extent practicable to reach needy children.

(2) Estimated number of service institutions eligible to participate and estimated number of sites and average daily attendance.

(3) Estimated number of service institutions expected to participate and estimated number of sites and average daily attendance.

(4) Estimated number of sponsors which will receive $50,000 in Program payments and average daily attendance.

(5) Estimated amount of Program funds by month needed for Program payments.

(6) Estimated amount of State funds needed to operate the Program.

(7) Number of sponsor training sessions planned and number of reviews planned.

(8) The State agency budget by month on the use of Program and State administrative funds available under the Program including, but not limited to, staffing (part-time and full-time), salaries, travel, and per diem.

(9) The actions to be taken by the State agency to maximize the use of school food service facilities.

(10) The actions to be taken by the State to ensure that sites at which a Program food service is planned serve areas or children of economic need.

(11) The actions to be taken by the State to ensure compliance with the requirements of the Department's regulations respecting nondiscrimination (7 CFR Part 15).

(12) The State's plan for meeting its audit and monitoring responsibilities.

(13) Data for the prior fiscal year's operation on the number of sponsors who participated and number of reviews and audits performed as well as a detailed breakdown of how State administrative funds made available to the State under the Program were spent.

(14) Quantitative description of present service to needy children and future plans for reaching needy children not being served.

(b) The State agency shall give the Governor, or his delegated agency, the opportunity to comment on the relationship of the plan to comprehensive and other State plans and programs and to those of affected areawide or local jurisdictions. A period of 45 days from the date of the receipt of the plan shall be afforded to make such comments.

Subpart C—Sponsor Provisions

§ 225.9 Requirements for participation.

(a) Service institutions shall, not later than the deadline date for applications established under § 225.5, make written application to the State agency, or FNSRO where applicable, for participation in the Program as sponsors.

(b) Each service institution shall submit, as part of the application, a site information sheet, as developed by the State agency, or FNSRO where applicable, for each site where a food service operation is proposed.

(c) Applications shall include information in sufficient detail to enable the State agency, or FNSRO where applicable, to determine whether the service institution meets the minimum criteria for participation in the Program set forth in § 225.4 of this Part, and extent of the need for Program payments. In addition, all applicants planning to operate 10 or more food service sites must include a management plan for review and approval by the State agency, or FNSRO where applicable. Such a plan shall include the service institution's budget and staffing plan.

(d) Each service institution applying for participation in the Program shall submit along with its application to the State agency, or FNSRO where applicable, a plan for and the wording to be used in its invitation to bid for food service, if required under § 225.11, and a copy of its letter of engagement with a certified public accountant, if required under paragraph (h) of this section.

(e) Each service institution shall submit documentation supporting the eligibility of each site based on areas where poor economic conditions exist along with the site information sheet, except that residential summer camps and nonresidential public or nonprofit private institutions which offer a regularly scheduled organized cultural or recreational activity to enrolled children for whom a daily attendance register is maintained may instead submit with each site information sheet family-size income information which documents that at least one-third of all children enrolled in each session are eligible for free or reduced price school meals. Information on each session must be submitted at least 14 calendar days prior to the opening of the session or at such time as specified by the State agency, or FNSRO where applicable.

(f) Service institutions shall submit with each site information sheet a certi-

fication by State or local health authorities as to the suitability of that site for food service.

(g) Service institutions selected for participation in the Program as sponsors shall enter into written agreements with the State agency, or in those States in which FNSRO administers the Program, service institutions shall enter into written agreements with the Department. Such agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service for children on school vacation during the months of May through September or from May through September and at some other times during the year for children on school vacation under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.10 during a period designated as the meal service period by the sponsor;

(3) Serve meals without cost to all children only at sites approved for participation in the Program;

(4) Make no discrimination against any child because of race, color or national origin and make a statement to this effect available to the local news media;

(5) Claim reimbursement only for the type or types of meals specified in the agreement served to children at approved sites during the approved meal service period;

(6) Submit Claims for Reimbursement in accordance with procedures established by the State agency, or FNSRO where applicable;

(7) Maintain, in the storage, preparation and service of food, proper sanitation or health standards in conformance with all applicable State and local laws and regulations;

(8) Purchase, in as large quantities as may be efficiently utilized in the Program, foods designated as plentiful by the State agency or the Department;

(9) Accept and use, in as large quantities as may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(10) Have access to facilities necessary for storing, preparing and serving food;

(11) Maintain a financial management system as prescribed by the State agency, or FNSRO were applicable;

(12) Maintain on file documentation of site visits;

(13) Upon request, make all accounts and records pertaining to the Program available to the State agency and to FNS for audit or administrative review, at a reasonable time and place. Such records shall be retained for a period of three years after the end of each fiscal year, except that, if audit findings shall be retained beyond the three-year period as long as required for the resolution of any issues raised by the audit.

(h) Each sponsor whose total Program payments under any Program agreement are expected to exceed $50,000 shall be responsible for providing that an audit be conducted of its Program Claims and the supporting documentation of those Claims by an independent Certified Public Accountant. The sponsor's final Claim for Reimbursement under the agreement shall not be eligible for reimbursement until the audit has been completed and the results have been reviewed by the State agency, or FNSRO where applicable. The costs of the audit may be considered an administrative cost.

(i) Each sponsor participating in any program under Parts 210, 215, 220, 226, 230, or 250 of this chapter, or any other Federally funded program, shall submit separate claims for reimbursement for each program.

(j) Each sponsor shall, to the maximum extent feasible, utilize existing school food service facilities or obtain meals from a school food service facility, and the applicable requirements of this part shall be embodied in a written agreement between the sponsor and the school.

(k) Sponsors shall operate their food service in accordance with the provisions of this part and any Instructions and handbooks issued by FNS or the State agency which are not inconsistent with the provisions of this part.

§ 225.10 Food service requirements.

(a) Meals which may be served under the Program shall be limited to breakfast, lunch, supper and supplemental food served between such other meals, except that supplemental food shall not be approved if the sponsor also participates in the Special Milk Program (7 CFR Part 215). Three hours shall elapse between the beginning of one meal service and the beginning of another, except that four hours shall elapse between the service of a lunch and supper when no other meal is served between lunch and supper. The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals. The service of supper meals shall begin no later than 6:00 p.m. No sponsor shall be approved for more than two supplements a day. Meals served outside of the period of approved meal service shall not be eligible for Program payments. Each sponsor shall serve the type or types of meals provided for in its agreement with the State agency, or FNSRO where applicable.

(b) Except as otherwise provided in this section and any appendices to this part, each meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain:

(i) One-half pint (1 cup) of milk as a beverage or on cereal or used in part for each purpose,

(ii) One-half cup serving of fruit or vegetable, or both, or full strength fruit or vegetable juice,

(iii) One slice of whole-grain or enriched bread; or an equivalent quantity of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or three-fourths cup (volume) or one ounce (weight), whichever is less, of whole-grain or enriched or fortified cereal, or an equivalent quantity of any combination of these foods.

(2) Lunch or supper shall contain:

(i) One-half pint (1 cup) of milk as a beverage,

(ii) Two ounces (edible portion as served) of cooked lean meat, poultry or fish; or two ounces of cheese; or one egg; or one-half cup of cooked dry beans or peas; or four tablespoons of peanut butter; or an equivalent quantity of any combination of the above-listed foods,

(iii) A three-fourths cup serving consisting of two or more vegetables or fruit, or both. Full-strength vegetable or fruit juice may be counted to meet not more than one-fourth cup of this requirement,

(iv) One slice of whole-grain or enriched bread, or an equivalent quantity of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour.

(3) Supplemental food shall include:

(i) One-half pint (1 cup) of milk or 8 fluid ounces of full-strength fruit or vegetable juice or 1 cup of fruit or vegetable, or an equivalent quantity of any combination of these foods,

(ii) One slice of whole-grain or enriched bread, or an equivalent quantity of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or three-fourths cup (volume) or one ounce (weight), whichever is less, of whole-grain or enriched or fortified cereal, or an equivalent quantity of any combination of these foods.

(c) The quantities of food specified in paragraphs (b) (1) and (2) of this section are approximate amounts of food to serve 10 to 12 year-old boys and girls. Greater or lesser amounts of these foods may be served if participating children are older or younger and if the sponsor has the capability of controlling portion size so as to ensure that variations in portion size are in accordance with the age levels of the children served.

(d) If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining delivery thereof, the State agency, or FNSRO where applicable, may approve the service of breakfasts, lunches, suppers or supplemental food without milk during the emergency period.

(e) The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases the State agency, or FNSRO where applicable, may approve the service of meals without milk, provided that an equivalent amount of canned, whole dry, or nonfat dry milk is used in the preparation of the components of all meals. In addition, the State agency, or FNSRO where applicable, may approve the use of dry milk by residential summer camps in meals served to children participating in camp sponsored activities which make the service of fluid milk impracticable.

(f) In American Samoa, Guam, Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands, the fol-

lowing variations from the meal requirements are authorized: A serving of a starchy vegetable, such as ufi, tanniers, yams, plantains, sweet potatoes, or a serving of enriched rice or enriched or whole-grain cereal products such as macaroni, dumplings or noodles may be substituted for the bread requirement.

(g) Substitutions may be made by sponsors in paragraph (b) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such food. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(h) FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(i) The State agency, or FNSRO where applicable, may approve upon request by a sponsor the service of meals under the Program to children under 1 year of age. Sponsors approved for this type of meal service shall be required by the State agency, or FNSRO where applicable, to comply with the applicable meal patterns contained in the Child Care Food Program regulations (7 CFR Part 226).

§ 225.11 Food service management companies.

(a) Any sponsor may contract with a food service management company (or other commercial enterprise) for the preparation of unitized meals, with or without milk. Any sponsor may employ a food service management company to operate its entire food service, *Provided, however,* That a sponsor that so employs a food service management company shall remain responsible for seeing that the food service operation is in conformity with its agreement with the State agency, or FNSRO where applicable. Any sponsor whose contract with a food service management company will exceed $10,000 in value shall use a competitive bid procedure in the selection of the food service management company. All sponsors shall adhere to the procurement standards set forth in § 225.15 and shall follow applicable State or local laws governing bid procedures. In addition, sponsors shall, when advertising for bids for food service, at a minimum, adhere to the following requirements:

(1) The invitation to bid shall not specify a minimum or maximum price;

(2) The invitation to bid shall contain a cycle menu upon which the bids shall be based;

(3) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless it can be demonstrated that such special requirements are required by the children to be served;

(4) The invitation to bid shall not provide for loans to be made to sponsors by food service management companies;

(5) Non-food items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(6) A copy of the health certification required in this section shall be submitted by the food service management company with each bid;

(7) The sponsor shall make available to the State agency, or FNSRO where applicable, the reason for selecting the food service management company chosen.

(b) The sponsor/food service management company contract shall expressly provide that:

(1) The sponsor shall provide the food service management company with a list of approved food service sites and shall update the list as needed;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall report thereon to the sponsor promptly at the end of each month, at a minimum;

(3) The food service management company shall have State or local health certification for the facility in which it is preparing meals for use in the Program and it shall ensure that all health and sanitation requirements are met at all times;

(4) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for a period of 3 years from the date of submission of the final Claim for Reimbursement for inspection and audit by representatives of the State agency, of the Department, and of the United States General Accounting Office at any reasonable time and place;

(5) Unitized meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(6) Increases and decreases in the number of meal orders may be made by the sponsor as needed within a period of prior notice mutually agreed upon;

(7) No payment shall be made for meals that do not meet nutritional requirements, are spoiled or unwholesome at time of delivery, or do not otherwise meet the requirements of the contract;

(8) All meals shall meet the requirements of § 225.10;

(9) Remedies for nonperformance shall be stipulated in each contract.

(c) Each request for an exception to the standard contract shall be submitted for consideration to the State agency, or FNSRO where applicable.

(d) Copies of all contracts between sponsors and food service management companies shall be submitted to the State agency, or FNSRO where applicable, prior to the beginning of Program operations.

(e) Each food service management company which enters into a food service contract with a sponsor under the Program shall obtain a performance bond in an amount equal to the value of such contract. Sponsors shall require the food service management company to furnish a copy of the bond.

§ 225.12 Program payments.

(a) Program payments shall be made to sponsor only after execution of and in accordance with the terms of the agreement with the State agency or the Department. No Program payments shall be made for meals served at a food service site before the sponsor has received written notification of approval for said food service site from the State agency, or FNSRO where applicable.

(b) Program payments shall be made to any sponsor in whichever following amount is the lesser: The net program costs or: 87.25 cents for a lunch or supper, of which 6.5 cents may be used only for administrative costs; 48.25 cents for a breakfast, of which 3.25 cents may be used only for administrative costs; and 22.75 cents for supplemental food, of which 1.5 cents may be used only for administrative costs. In no event may Program payments include administrative costs in excess of 6.5 cents for a lunch or supper, 3.25 cents for a breakfast or 1.5 cents for supplemental food. The last Claim for Reimbursement at the end of the sponsor's food service operation may be paid at rates in excess of the aforementioned rates: *Provided, however,* That the total Program payments paid to a sponsor do not exceed the lesser of (1) rates times total meals by type served to children during the Program operation or (2) net program costs

(c) The Secretary shall prescribe by March 1 of each fiscal year, an adjustment to the nearest one-fourth cent in the reimbursement rates set forth in paragraph (b) of this section, to reflect changes for the year ending January 31, in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(d) Sponsors who wish to claim only for the cost of obtaining food shall maintain accurate records to justify their food costs. In no instance shall Program payments for the cost of obtaining food exceed the per meal Program payment rates, minus the amount set aside for administrative costs.

§ 225.13 Program payment procedures.

(a) To be entitled to reimbursement under this part, each sponsor shall submit to the State agency, or FNSRO where applicable, a monthly Claim for Reimbursement as specified in paragraph (d) of this section. Claims for Reimbursement may be submitted more frequently, at the discretion of the State agency, or FNSRO where applicable. Any Claim for Reimbursement not received by the State agency, or FNSRO where applicable, within 90 days after the close of the sponsor's food service operations may be disqualified from payment, except where the State agency, or FNSRO where applicable, considers that a Claim for Reimbursement has been filed late because of circumstances beyond the control of each sponsor. This paragraph

shall not affect the obligation of each sponsor to comply with the requirements of paragraph (d) of this section.

(b) No later than June 1, July 15, and August 15 of each fiscal year, or in the case of sponsors which operate under a continuous school calendar, the first day of each month of operation, the State agency, or FNSRO where applicable, shall forward advance Program payments to each participating sponsor based upon receipt of a request for an advance Program payment from that sponsor no later than 30 days prior to the date for each advance payment: *Provided, however*, That (1) the State agency, or FNSRO where applicable, shall not release the first month's advance Program payment to any sponsor which has not certified that it has held training sessions for its own personnel and the site personnel with regard to Program duties and responsibilities; and (2) no advance Program payment shall be made for any month in which the sponsor operates for less than 10 Program days. Requests by sponsors for advance Program payments not received within 30 days of the applicable payment date shall be honored by the State agency, or FNSRO where applicable, within 30 days of receipt.

(c) Each month's advance Program payment to a sponsor shall be in an amount to be determined by the State agency, or FNSRO where applicable, but in any case to any sponsor which participated in the prior year not more than 65 percent of the total Program payment, excluding any payments which may be part of a demand for recovery under § 225.14(a) or § 225.14(d), for meals served by that sponsor in the same calendar month of the preceding calendar year. If the State agency, or FNSRO where applicable, has reason to believe that a sponsor will not be able to submit a valid Claim for Reimbursement in an amount sufficient to cover outstanding advance Program payments, the subsequent month's advance Program payment shall be withheld until such time as the State agency, or FNSRO where applicable, has received a valid Claim. Sponsors may elect not to receive advance Program payments. Any interest earned on advance Program payments shall be returned to FNS.

(d) Claims for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the required information for Program reports. Claims for Reimbursement shall be filed with the State agency, or FNSRO where applicable, by the 10th of the month following the month covered. Not more than 10 days of the beginning or ending month of the sponsor's food service operation in a fiscal year may be combined on a Claim for Reimbursement with the operations of the month immediately following the beginning month, or preceding ending month. Claims for Reimbursement may not be combined for months from different fiscal years.

(e) Sponsors whose final month of Program operations is less than 10 days in duration shall submit a combined Claim for Reimbursement covering the final month and the entire month immediately preceding the final month. Such combined Claims shall be filed with the State agency, or FNSRO where applicable, not later than 10 days following the final day of Program operations.

(f) Failure by a sponsor to file a claim within the time limits specified in paragraphs (d) and (e) of this section shall be sufficient basis for the State agency, or FNSRO where applicable, to make a determination that the sponsor's claim is $0.00. Under such circumstances the sponsor shall be obligated to make immediate payment to the State agency, or FNSRO where applicable, of any amount of reimbursement demanded by it. Subject to paragraph (a) of this section, appropriate adjustments may be made if a claim is subsequently submitted by the sponsor. The audit requirements of § 225.9(h) shall not be construed as permitting delay in submission of claims pending completion of the audit requirements.

(g) In submitting a Claim for Reimbursement, each sponsor shall certify that the Claim is true and correct and that records are available to support the Claim.

(h) Program payments advanced to sponsors which are not subsequently deducted from a valid Claim for Reimbursement must be repaid upon demand to the State agency, or FNSRO where applicable.

§ 225.14 Claims against sponsors.

(a) State agencies shall disallow any portion of a Claim for Reimbursement and promptly recover any Program payment made to a sponsor that was not properly payable under this part. State agencies shall use their own procedures to disallow claims and recover overpayments already made. This shall include court actions, where appropriate. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand, and allow the sponsor full opportunity to submit evidence. If, in the determination of CND, a State agency has acted in conformity with the provisions of this Part and has made every reasonable effort to recover any overpayment, the State agency shall not be liable for failure to collect such overpayment.

(b) The State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of a final Financial Status Report, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of any issues raised in the audit.

(c) The amounts recovered by the State agency from sponsors may be utilized, first to make Program payments to sponsors for the period for which the funds were initially available, and second, to repay any State funds expended in the payment of Claims for Reimbursement under the Program not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this Part.

(d) When FNSRO administers the Program with respect to sponsors and disallows a Claim for Reimbursement or a portion of a Claim, or makes a demand for refund of an alleged overpayment, it shall notify the sponsor of the reasons for such disallowance or demand, and the sponsor shall have full opportunity to submit evidence or to resubmit a claim for any amount disallowed or demanded.

Subpart D—Miscellaneous Provisions

§ 225.15 Procurement provisions.

(a) All sponsors shall adhere to the following standards when procuring goods and services with Program payments for use in the Program.

(1) The Sponsor shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Program funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which Program funds are used, where, to his knowledge, he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment, has an interest. The sponsor, its officers, employees and agents, shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied by the sponsor for violations of such standards by the sponsor's officers, employees or agent.

(2) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The sponsor should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the sponsor, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for his bid/offer to be evaluated by the sponsor. Any and all bids/offers may be rejected when it is in the sponsor's interest to do so.

(3) All sponsors shall establish procurement procedures that provide for, at a minimum, the following procedural requirements.

(i) Proposed procurement actions shall follow a procedure to assure the avoid-

ance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

(iii) Positive efforts shall be made by the sponsor to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Program funds.

(iv) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by sponsors but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(vi) All proposed sole source contracts or where only one bid or proposal is received in which the aggregate expenditure is expected to exceed $5,000 shall be subject to prior approval at the discretion of the State agency, or FNSRO where applicable.

(vii) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(viii) Procurement records and files for purchases in excess of $10,000 shall include the following:

(*a*) Basis for contractor selection;

(*b*) Justification for lack of competition when competitive bids or offers are not obtained;

(c) Basis for award cost or price.

(ix) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

(4) The sponsor shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(i) Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(ii) All contracts in excess of $10,000 shall contain suitable provisions for termination by the sponsor including the manner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(iii) All contracts awarded by sponsors and their contractors having a value of more than $10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(iv) Where applicable, all contracts awarded by sponsors in excess of $2,500 that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(v) Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to invention and materials generated under the contract or agreement are subject to the regulations issued by the Department and the sponsor. The contractor shall be advised as to the source of additional information regarding these matters.

(vi) All negotiated contracts (except those of $10,000 or less) awarded by sponsors shall include a provision to the effect that the sponsor, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(vii) Contracts for amounts in excess of $100,000 shall contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. Violations shall be reported to the Department and the Regional Office of the Environmental Protection Agency.

(5) For proposed contracts subject to a competitive bidding procedure sponsors shall also ensure that:

(i) All proposed contracts shall be publicly announced at least 14 days prior to the opening of bids;

(ii) The bids shall be publicly opened; and

(iii) All bidders shall be notified at least five days prior to the opening of the bids of the time and place of the bid opening.

(6) These standards do not relieve the sponsor of the contractual responsibilities arising under its contracts. The sponsor is the responsible authority without recourse to the State agency, or FNSRO where applicable, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, under the Program. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

§ 225.16 Prohibitions.

(a) As provided by the Act, the value of assistance to children under the Program shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

(b) As provided by the Act, expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

§ 225.17 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall

be in accordance with Attachment K of Office of Management and Budget Circular A–110 (41 FR 32016, July 30, 1976).

(b) *Termination for cause.* FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reasons for the termination, together with the effective date. A State agency, or FNSRO where applicable, shall terminate a sponsor's participation in the Program by written notice whenever it is determined by FNS or the State agency that the sponsor has failed to comply with the conditions of the Program. When participation in a program has been terminated for cause, any funds paid to the State agency or any recoveries by FNS from the State agency shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, properly incurred by the State agency prior to termination. A State agency, or FNSRO where applicable, may terminate a sponsor's participation in accordance with these provisions.

§ 225.18 Program information.

Service institutions desiring information concerning the Program should write to the appropriate Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 34 Third Avenue, Burlington, Massachusetts 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, 729 Alexander Road, Princeton, New Jersey 08540.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, N.W., Atlanta, Georgia 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 536 South Clark Street, Chicago, Illinois 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1823 Stout Street, Denver, Colorado 80202.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(Catalog of Federal Domestic Assistance Program No. 10.559 National Archives References Services.)

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

Dated: December 15, 1976.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.76–37338 Filed 12–20–76;8:45 am]

Agricultural Stabilization and Conservation Service

[7 CFR Part 723]

TOBACCO

Proposed Determinations of Marketing Quotas for the 1977–78, 1978–79 and 1979–80 Marketing Years

Pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), consideration is being given to proclaiming national marketing quotas for Maryland (type 32) and cigar-filler (type 41) tobacco for the 1977–78, 1978–79 and 1979–80 marketing years. Within 30 days after the proclamation of such national marketing quotas referenda will be conducted of farmers engaged in the 1976 production of each of such kinds of tobacco to determine whether they favor or oppose marketing quotas for such years. A national marketing quota, national acreage allotment, national factor for apportioning the national acreage allotment (less reserve) to old farms, and the amount of the national reserve and parts thereof available for new farms and for making corrections and adjusting inequities in old farm allotments will be determined and announced for each of these kinds of tobacco for the 1977–78 marketing year.

The Act (7 U.S.C. 1312(a)) provides that the Secretary shall proclaim not later than February 1 of any marketing year with respect to these kinds of tobacco, a national marketing quota for each of the next three succeeding marketing years whenever he determines with respect to such kinds of tobacco:

(1) That a national marketing quota has not previously been proclaimed and the total supply as of the beginning of such marketing year exceeds the reserve supply level therefore;

(2) That such marketing years is the least year of three consecutive years for which marketing quotas previously proclaimed will be in effect;

(3) That amendments have been made in provisions for establishing farm acreage allotments which will cause material revision of such allotments before the end of the period for which quotas are in effect; or

(4) That a marketing quota previously proclamed for such marketing year is not in effect because of disapproval by producers: *Provided,* That if such producers have disapproved national marketing quotas for three successive years subsequent to 1952, thereafter a national marketing quota shall not be proclaimed hereunder which would be in effect for any marketing year within the three-year period for which national marketing quotas previously proclaimed were disapproved by producers, unless prior to November 10 of the marketing year one-fourth or more of the farmers engaged in the production of the crop of tobacco harvested in the calendar year in which such marketing year begins petition the Secretary, in accordance with such regulations as he may prescribe, to proclaim a national marketing quota for each of the next three succeeding marketing years.

Producers of both Maryland (type 32) and cigar-filler (type 41) tobacco have disapproved national marketing quotas for three successive years subsequent to 1952. Quotas for these kinds of tobacco were last proclaimed for the 1974–75, 1975–76 and 1976–77 marketing years (39 FR 4558). Producers of both Maryland (type 32) and cigar-filler (type 41) tobacco disapproved marketing quotas in separate referenda held during the period February 25–March 1, 1974 (39 FR 4678).

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13 and 14; Fire-cured tobacco, comprising type 21; Fire-cured tobacco, comprising types 22, 23, and 24; Dark air-cured tobacco, comprising types 35 and 36; Virginia sun-cured tobacco, comprising type 37; Burley tobacco, comprising type 31; Maryland tobacco, comprising type 32; Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54 and 55; and Cigar-filler tobacco, comprising type 41.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later

than the first day of February 1977 with respect to the kinds of tobacco covered by this notice, the amount of the national marketing quota which will be in effect for the 1977–78 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) provides further that the amount of the 1977–78 national marketing quota (determined pursuant to such section) may, not later than March 1, 1977, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

The Act (7 U.S.C. 1301(b)) defines the "total supply" of tobacco for any marketing year as the carry-over at the beginning of the marketing year (on January 1 of such marketing year in the case of Maryland tobacco), plus the estimated production in the United States during the calendar year in which such marketing year begins. "Reserve supply level" is defined as the normal supply plus 5 percent thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 percent of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The Act (7 U.S.C. 1312(c)) requires that within 30 days after national marketing quotas are proclaimed under section 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but results shall in no way affect or limit the subsequent proclamation and submisison to a referendum, as otherwise provided in § 312 of the Act (7 U.S.C. 1312), of national marketing quotas.

The Act (7 U.S.C. 1313(g)) authorizes the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed, and to apportion the national acreage allotment (less a reserve of not to exceed 1 percent thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

The Act (7 U.S.C. 1313(g)) also provides that any acreage of tobacco harvested in excess of the farm acreage allotment for the year 1955 or any subsequent crop shall not be taken into account in establishing * * * farm acreage allotments.

The subjects and issues involved in making the determinations described in this notice are:

1. The amount of the national marketing quota for each kind of tobacco for the 1977–78 marketing year.

2. The conversion of the national marketing quotas into national acreage allotments and apportionment of same, less reserve of not to exceed 1 percent, among old farms.

3. The amounts of the national acreage allotments to be reserved for new farms, and for making corrections and adjusting inequities in old farm allotments.

4. The date(s) or period(s) of the two referenda on quotas for the 1977–78, 1978–79 and 1979–80 marketing years for Maryland (type 32) and cigar-filler (type 41) tobacco, and whether either or both of the referenda should be conducted at polling places rather than by mail ballot (31 FR 12011).

Consideration will be given to data, views and recommendations, pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. All submissions must, in order to be sure of consideration, be postmarked not later than January 21, 1977. All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 5752, U.S.D.A. South Building, 14th and Independence Avenue, S.W., Washington, D.C.

Signed at Washington, D.C., on December 10, 1976.

SEELEY G. LODWICK,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.76-37226 Filed 12-20-76;8:45 am]

[7 CFR Part 724]

OTHER TOBACCO

Proposed Determinations of Marketing Quotas for the 1977–78, 1978–79 and 1979–80 Marketing Years

Pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq., hereinafter referred to as the "Act"), the Secretary is preparing (1) with respect to Virginia sun-cured tobacco (type 37) to proclaim national marketing quotas for the 1977–78, 1978–79, and 1979–80 marketing years and to conduct, within 30 days after the proclamation of such national marketing quotas, a referendum of farmers engaged in the 1976 production of such kind of tobacco to determine whether they favor or oppose marketing quotas for such years; and (2) with respect to fire-cured (type 21), fire-cured (types 22–24), dark air-cured, Virginia sun-cured, cigar-binder (types 51 & 52), and cigar filler and binder (types 42–44 and 53–55) tobacco, to determine and announce the amounts of the national marketing quotas for each of such kinds of tobacco for the 1977–78 marketing year; to convert such marketing quotas into national acreage allotments and announce the allotments; to apportion such allotments, less reserves of not to exceed 1 per centum of each respectively, through the local ASCS county committees among old farms and to apportion the reserves for use in (a) establishing acreage allotments for new farms and (b) making corrections and adjusting inequities in old farm allotments.

Sec. 312(a) of the Act (7 U.S.C. 1312(a)) requires the Secretary to proclaim marketing quotas, not later than February 1, 1977, for Virginia sun-cured tobacco for the three marketing years beginning October 1, 1977, because the 1976–77 marketing year is the last year of the three consecutive years for which marketing quotas previously proclaimed will be in effect.

Quotas were previously proclaimed, referendums conducted, and quotas approved by growers as follows: fire-cured and dark air-cured tobacco for the 1976–77, 1977–78, and 1978–79 marketing years (41 FR 4881); Virginia sun-cured tobacco for the 1974–75, 1975–76, and 1976–77 marketing years (39 FR 23985); and cigar binder tobacco (types 51 and 52) and cigar-filler and binder tobacco (types 42–44 and 53–55) for the 1975–76, 1976–77, and 1977–78 marketing years (40 FR 14737).

Section 301(b)(15) of the Act (7 U.S.C. 1301(b)(15)) defines "tobacco" as each one of the kinds of tobacco listed below comprising the types specified as classified in Service and Regulatory Announcement Numbered 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the Department:

Flue-cured tobacco, comprising types 11, 12, 13, & 14; Fire-cured tobacco, comprising type 21; Fire-cured tobacco, comprising types 22, 23, & 24; Dark air-cured tobacco, comprising types 35 & 36; Virginia sun-cured tobacco, comprising type 37; Burley tobacco, comprising type 31; Maryland tobacco, comprising type 32; Cigar- filler and cigar-binder tobacco, comprising types 42, 43, 44, 45, 46, 51, 52, 53, 54, & 55; and Cigar-filler tobacco, comprising type 41.

Section 301(b)(15) also provides that any one or more of the types comprising any such kind of tobacco shall be treated

as a "kind of tobacco" for the purposes of the Act if the Secretary finds that there is a difference in supply and demand conditions as among such types of tobacco which results in a difference in the adjustments needed in the marketings thereof in order to maintain supplies in line with demand. Pursuant to this authority, the Secretary has determined (15 FR 8214) that type 46 tobacco shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Pursuant to such authority, the Secretary has also determined (22 FR 367) that cigar-binder (types 51 and 52) tobacco, beginning with the 1957–58 marketing year, shall be treated as a separate kind of tobacco for purposes of marketing quotas and price supports. Type 45 tobacco is no longer grown. No further action under this section is contemplated at this time.

Section 312(b) of the Act (7 U.S.C. 1312(b)) provides that the Secretary shall determine and announce, not later than the first day of February 1977 with respect to kinds other than flue-cured tobacco, the amount of the national marketing quota which will be in effect for the 1977–78 marketing year in terms of the total quantity of tobacco which may be marketed which will make available during such marketing year a supply of each kind of tobacco equal to the reserve supply level. Section 312(b) of the Act provides further that the amount of the 1977–78 national marketing quota so announced may, not later than March 1, 1977, be increased by not more than 20 per centum if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restrictions of marketings in adjusting the total supply to the reserve supply level.

Section 301(b) of the Act (7 U.S.C. 1301 (b)) defines the "total supply" of any kind of tobacco (except type 46 for any marketing year as the carry-over at the beginning of the marketing year (or on January 1 of such marketing year in the case of Maryland tobacco) plus the estimated production in the United States during the calendar year in which such marketing begins. "Reserve supply level" is defined as the normal supply plus 5 per centum thereof. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 per centum of a normal year's domestic consumption and 65 per centum of a normal year's exports. A "normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

Section 312(c) of the Act (7 U.S.C. 1312(c)) requires that within 30 days after a national marketing quota is proclaimed under § 312(a) of the Act for a kind of tobacco, the Secretary shall conduct a referendum of farmers engaged in the production of the crop of such kind of tobacco harvested immediately prior to the holding of the referendum to determine whether such farmers are in favor of or opposed to quotas for the next three succeeding marketing years. If more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quotas, such results shall be proclaimed by the Secretary and the national marketing quotas so proclaimed shall not be in effect but such results shall in no way affect or limit the subsequent proclamation and submission to a referendum, as otherwise provided in section 312, of a national marketing quota.

Section 313(g) of the Act (7 U.S.C. 1313(g) authorizes the Secretary to convert the national marketing quota into a national acreage allotment on the basis of the national average yield for the five years immediately preceding the year in which the national marketing quota is proclaimed and to apportion the national acreage allotment (less a reserve of not to exceed 1 per centum thereof for new farms and for making corrections and adjusting inequities in old farm allotments) among old farms.

The subjects and issues involved in making the determinations described in this notice are:

1. The amount of the reserve supply level for fire-cured (type 21), fire-cured (types 22–24), dark air-cured, Virginia sun-cured, cigar binder (types 51 & 52) and cigar filler and binder (types 42–44 & 53–55) tobaccos.

2. The amount of the national marketing quota for each of these kinds of tobacco for the 1977–78 marketing year.

3. The national factors for apportioning national acreage allotments to old farms.

4. The amounts of the national acreage allotments to be reserved for new farms and for making corrections and adjusting inequities in old farm allotments.

5. The date(s) or period(s) of the referendum on quotas for the 1977–78, 1978–79, and 1979–80 marketing years for Virginia sun-cured tobacco, and whether the referendum should be conducted at polling places rather than by mail ballot (31 FR 12011).

Consideration will be given to data, views and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. All submissions must, in order to be sure of consideration, be received no later than January 21, 1977.

All written submissions made pursuant to the notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 5752-South Building, 14th and Independence Avenue, S.W., Washington, D.C.

Signed at Washington, D.C. on December 10, 1976.

SEELEY G. LODWICK,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.76-37223 Filed 12-20-76;8:45 am]

[7 CFR Part 726]

BURLEY TOBACCO

Proposed Determinations of Marketing Quotas for the 1977–78, 1978–79 and 1979–80 Marketing Years

Pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et. seq., hereinafter referred to as the "Act"), the Secretary is preparing to proclaim national marketing quotas for burley tobacco for the 1977–78, 1978–79 and 1979–80 marketing years and to determine and announce for the 1977–78 marketing year the amount of the national marketing quota, the national reserve, and the national factor. A marketing quota referendum will be held within 30 days after the proclamation.

Section 319(b) of the Act requires marketing quotas on a poundage basis be proclaimed and the amount of the national marketing quota for the 1977–78 marketing year be determined an announced not later than February 1, 1977.

Section 319(c) of the Act provides that the national marketing quota determined under this section for burley tobacco for any marketing year shall be the amount produced in the United States which the Secretary estimates will be utilized in the United States and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. Any such downward adjustment shall not exceed 5 per centum of such estimated utilization and exports. For each marketing year for which marketing quotas are in effect under this section, the Secretary in his discretion may establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 per centum of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas, and for establishing marketing quotas for new farms (that is, farms for which farm marketing quotas are not otherwise established). A reserve of 1,000,000 pounds was established for the 1976–77 marketing year (41 FR 4539).

Section 301(b) of the Act defines "Reserve supply level" as normal supply plus 5 percent. "Normal supply" is defined as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal carry-over. A

"Normal year's domestic consumption" is defined as the yearly average quantity produced in the United States and consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A "Normal year's exports" is defined as the yearly average quantity produced in the United States which was exported from the United States during the ten marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports. The reserve supply level used in determining the national marketing quota for the 1976–77 marketing year was 1,701 million pounds, calculated from a normal year's domestic consumption of 525 million pounds and a normal year's exports of 75 million pounds (41 FR 4539). The proposed reserve supply level for use in determining the national marketing quota for the 1977–78 marketing year is 1,718 million pounds, calculated from a normal year's domestic consumption of 535 million pounds and a normal year's exports of 100 million pounds.

The amount of the national marketing quota for the 1976–77 marketing year is 630 million pounds based upon total utilization of 630 million pounds with no adjusments necessary to maintain or reduce supplies (41 FR 4539). For the 1977–78 marketing year, utilization in the United States is estimated to be about 537 million pounds and exports are estimated to be about 100 million pounds. The total supply for the 1976–77 marketing year is 47 million pounds greater than the proposed reserve supply level, but the amount of the downward adjusment, if any, desirable for an orderly reduction in the total supply is still being considered.

Section 319(e) of the Act provides, in part, that each farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota determined under subsection 319(c) (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined: *Provided*, That such national factor shall not be less than 95 per centum.

Section 319(i) of the Act provides, in part, that if the Secretary, in his discretion, determines it is desirable to encourage additional marketings of any grades of burley tobacco during any marketing year to insure traditional market patterns to meet the normal demands of extent of 5 per centum of the farm marthorize the marketing of such grades without the payment of penalty or deduction from subsequent quotas to the extent of 5 percentum of the farm marketing quota for the farm on which the tobacco was produced, and such marketings shall be eligible for price support.

Section 319(h) of the Act provides that effective with the marketing year beginning October 1, 1976, no marketing quota, other than a new farm marketing quota, shall be established for a farm on which no burley tobacco was planted or considered planted in any of the five years immediately preceding the year for which farm marketing quotas are being established.

The subjects and issues involved in the proposed determinations with respect to burley tobacco for the 1977–78 marketing year are:

1. The amount of the national marketing quota.

2. The amount of the reserve supply level.

3. The amount of the national reserve.

4. Whether the Secretary should implement the provision in section 319(i) of the Act to encourage additional marketings of any grades to insure traditional market patterns.

5. The date or period of the referendum on quotas for the 1977–78, 1978–79, and 1979–80 marketing years for burley tobacco and whether the referendum should be conducted at polling places rather than by mail ballot (31 FR 12011).

The national factor is not considered an issue in these determinations because it results from a mathematical computation under section 319(e) of the Act.

Consideration will be given to data, views and recommendations pertaining to the proposed determination which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. All submissions must, in order to be sure of consideration, be received not later than January 21, 1977. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in room 5752–U.S.D.A. South Building, 14th and Independence Avenue, S.W., Washington, D.C.

Signed at Washington, D.C. on: December 10, 1976.

SEELEY G. LODWICK,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.76-37225 Filed 12-20-76;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 220]

[Reg. T; Docket No. R-0054]

CREDIT BY BROKERS AND DEALERS

Credit to Exchange Specialists in Options

The Board of Governors of the Federal Reserve System, pursuant to authority contained in sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and w), proposes for comment an amendment to the provisions in Regulation T which govern credit which a broker or dealer extends to exchange specialists. The purpose of this amendment it to provide appropriate relief to option specialists who, in furtherance of their obligation to promote an orderly and efficient market, are required to assume certain security positions.

The amendment would permit a specialist in options, in certain limited circumstances, to purchase or sell short in the specialist's account with a broker or dealer, securities underlying the options in which the specialist is registered. It would also provide a reduced margin requirement for such underlying securities at any time when they serve as a hedge against a short option position which is not offset by a corollary long option position. The proposed amendment would also provide an alternative method of calculating the adjusted debit balance in a specialist's account in order to provide relief for specialists with short security positions comparable to that presently provided to specialists with long security positions. The existing rule for specialist credit was written before the advent of exchange-traded options and, therefore, the concessions which it grants are not specifically structured for the mechanics of the options markets.

The proposed amendment is a response to a request for rulemaking made by the Chicago Board Options Exchange as well as a recognition by the Board of Governors that option specialists might need certain specific relief from the Board's uniform margin rule for the writing of options which is scheduled to go into effect on January 1, 1977. The uniform rule was published in the FEDERAL REGISTER on October 5, 1976 (41 FR 43895).

The Board's proposal would allow the purchase and short sale of a security underlying an option in a specialist's account when the account has a short option position which is susceptible to exercise and the account does not hold an offsetting position in a comparable "in-or-at-the-money" option on the same underlying security. While the underlying stock which has been purchased or sold short in the account serves as such a hedge, a margin of 25 per cent (instead of the current margin requirement of 50 per cent) will be required. If the underlying stock or short position is not liquidated when it no longer serves as an allowable hedge, the current margin requirements will be operative. Any account which carries positions in underlying stock which were purchased or sold short under the terms of the proposed rule must be maintained on a daily basis with no excess of the adjusted debit balance over the maximum loan value of the securities in the account.

The amendment is not intended to affect specialists who are not option specialists.

The proposed amended paragraph is set forth below:

§ 220.4 Special Accounts.

* * * * *

(g) *Specialist's account.* (1) In a special account designated as a specialist's account, a creditor may effect and finance, for any member of a national securities exchange who is registered and acts as a specialist in securities on the exchange, such member's transactions as

a specialist in such securities, or effect and finance, for any joint venture in which the creditor participates, any transactions in any securities of an issue with respect to which all participants, or all participants other than the creditor, are registered and act on a national securities exchange as specialists.

(2) Such specialist's account shall be subject to the same conditions to which it would be subject if it were a general account unless the specialist's exchange is a national securities exchange which requires and submits to the Board of Governors of the Federal Reserve System reports suitable for supplying current information regarding specialist's use of credit pursuant to this paragraph (g), in which case, the following modifications of and exceptions to the general rule will apply:

(i) The required calculations of § 220.-3(b)(1)(ii) to determine if an account is an "account subject to § 220.8(g)" and the requirements of § 220.6(b) regarding joint ventures shall not apply.

(ii) The maximum loan value of registered securities in such account shall be:

(*a*) Such maximum loan value as the Board shall prescribe from time to time in § 220.8 (the Supplement to Regulation T) where (*1*) the security is identified as held for investment pursuant to a rule of the Commissioner of Internal Revenue (Regs. section 1–1236–1(d)), or (*2*) the security is an underlying security acquired in the account as permitted under paragraph (g)(3) of this section and held in the account on any day when it is not eligible to be held pursuant to paragraph (g)(3)(i) of this section.

(*b*) 75 per cent of the current market value of an underlying security that is purchased in the account under the terms of paragraph (g)(3) of this section and held in the account on any day when it is eligible to be held pursuant to paragraph (g)(3)(i) of this section.

(*c*) The maximum loan value as determined by the creditor in good faith for any other registered security.

(iii) The amount to be included in the adjusted debit balance of the account shall be:

(*a*) The margin required for the writing of options may be either the amount required by § 220.3(i) and 220.8 (the Supplement to Regulation T) or 130 per cent of the current market value of each option held in a short position in the account which is not offset by one of the positions which may be used in lieu of margin under § 220.3(i)(1).

(*b*) The margin required in connection with the sale of a security sold short in conformity with this paragraph shall be the current market value of the security sold short plus either 25 per cent of such current market value on any day when the position is eligible to be held pursuant to the conditions provided in paragraph (g)(3)(i) of this section or such margin as the Board shall prescribe for short sales in § 220.8 (the Supplement to Regulation T) for positions not so held.

(iv) At any time when a position in an underlying security which was purchased or sold short in the account under the terms of paragraph (g)(3) of this section is held in the account, the account shall be maintained on a daily basis with no excess of the adjusted debit balance over the maximum loan value of the securities in the account.

(3) In this account, a specialist in options on a national securities exchange is permitted to purchase or sell short the securities underlying the options in which such member is registered and acts as a specialist only under one or more of the following conditions:

(i) The account holds short positions in call options in which the member is registered and acts as a specialist which are "in or at the money" but only to the extent the positions are not offset in the account by long positions in call options for an equal or greater number of shares of the same underlying securities which are "in or at the money" and do not expire before the short positions in call options;

* * * * *

(ii) the account holds short positions in put options in which the member is registered and acts as a specialist which are "in or at the money" but only to the extent the positions are not offset in the account by long positions in put options for an equal or greater number of shares of the same underlying securities which are "in or at the money" and do not expire before the short positions in put options;

(iii) The account held a short position in an option against which an exercise notice was tendered; or

(iv) The account held a long position in an option which was exercised.

(4) For the purpose of this paragraph:

(i) The term "underlying security" means the security which will be delivered upon exercise of the option.

(ii) The term "joint venture" does not include any account which, by written agreement with a creditor, permits the commingling of the security positions of a specialist or a specialist unit with those of other specialists or specialist units unless such agreement provides for a sharing of profits and losses from the account on some predetermined ratio.

(iii) The term "in or at the money" means, with respect to a call, that the current market pirce of the underlying security is not more than 5 per cent below the exercise price of the option, and, with respect to a put, the current market price of the underlying security is not more than 5 per cent above the exercise price of the option.

To aid in the consideration of this matter by the Board interested persons are invited to submit relevant data, views, comments, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 17, 1977. All material should include the docket number R–0054. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information (12 CFR 261.6(a)).

This notice is published pursuant to section 553(b) of Title 5 of the United States Code and § 262.2(a) of the Board's Rules of Procedure (12 CFR 262.2(a)).

By order of the Board of Governors, December 15, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76–37414 Filed 12–16–76;1:53 pm]

REGIONAL ACTION PLANNING COMMISSION

[13 CFR Parts 500, 520, 551, 552, 553, 554, 555, and 560]

ECONOMIC DEVELOPMENT REGIONS

Puerto Rico, Virgin Islands, California and Texas

Notice is hereby given of a proposal to amend Title 13, Chapter V, of the Code of Federal Regulations by amending Parts 500, 520, and 560, and adding new Parts 551, 552, and 555.

The purpose of these amendments and additions is to implement program authorities and amendments to Title V of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3181 et seq.), contained in Public Law 94–188 and Public Law 94–487 and to clarify existing procedures.

The amendments:

Authorize the Secretary of Commerce to include the Commonwealth of Puerto Rico, the Virgin Islands, the States of California and Texas within a designated "economic development region" without requiring that they be contiguous to another State.

Authorize the Secretary of Commerce to establish a single State regional commission for Texas and California if requirements in the Act are met and the States agree to such establishment.

Require that each State member of a regional commission shall be the Governor, with a single alternate appointed by the Governor from his cabinet or personal staff. State members shall elect a cochairman from among their number to serve for one year.

Redefine the term "Federal grant-in-aid programs" to allow the Commissions to supplement those Federal programs enacted before September 30, 1979.

Part 551 describes procedures by which a regional commission, with the assistance of the Secretary of Transportation, may conduct studies and investigations of the transportation needs of the region. Authorized activities include planning, construction, purchase of equipment and operation of transportation demonstration projects.

Part 552 describes procedures by which the regional commissions may carry out energy-related demonstration projects and programs.

Part 553 is reserved for all regulations pertaining to health and nutrition demonstration projects.

Part 554 is reserved for all regulations pertaining to education demonstration projects.

Part 555 describes a program for carrying out demonstration projects in connection with the development and stimulation of indigenous arts and crafts of the regions established under the Act.

Comments on or objections to these proposed regulations may be made in writing to the Acting Special Assistant for Regional Economic Coordination, Room 2092, U.S. Department of Commerce, Washington, D.C. 20230, no later than January 31, 1977. Final regulations will be published as soon as possible thereafter.

PART 500—ECONOMIC DEVELOPMENT REGIONS

1. Section 500.3 is amended by revising paragraph (b) to read as follows:

§ 500.3 Criteria for designation.

* * * * *

(b) With the exception of Alaska and Hawaii and the Commonwealth of Puerto Rico and the Virgin Islands and the States of California and Texas, the region is within contiguous States, and

* * * * *

PART 520—REGIONAL COMMISSIONS

2. Section 520.1 is amended by designating the existing paragraph as "(a)" and by adding a new paragraph "(b)" to read as follows:

§ 520.1 Establishment.

(a) * * *

(b) If the Secretary finds that the State of Alaska or the State of Hawaii or the State of California or the State of Texas meets the requirements for an economic development region, he may at the request of the Governor of the affected State establish a Commission for such State.

3. Section 520.2 is amended by revising paragraph (b) as follows:

§ 520.2 Membership.

* * * * *

(b) The Federal Cochairman is appointed by the President, by and with the advice and consent of the Senate, and may have an alternate who is similarly appointed. The State member shall be the Governor. Each State member may have a single alternate appointed by the Governor from among the members of the Governor's cabinet or the Governor's personal staff.

4. Section 520.3 is amended to read as follows:

§ 520.3 Initial meeting.

The Federal Cochairman, after appointment by the President and confirmation by the Senate, is authorized to call the initial organizational meeting of the regional commission at which time, among other things, the State members of the commission shall elect a State Cochairman from among their number for a term of not less than one year, and the commission may declare its establishment, adopt a charter listing its functions, and adopt resolutions governing the internal administration of the commission.

5. Section 520.4 is revised to read as follows:

§ 520.4 Voting.

(a) Decisions by a regional commission require the affirmative vote of the Federal Cochairman and a majority, or at least one if only one of two, of the State members.

(b) No decision involving commission policy, approval of regional development plans, implementing investment programs or allocating funds among the States may be made without a quorum of State members present.

(c) A State alternate shall not be counted toward the establishment of a quorum of the commission in any instance in which a quorum of the State members is required to be present. No commission power or responsibility specified in paragraph (b) of this section, nor the vote of any commission member, may be delegated to any person not a commission member or who is not entitled to vote in commission meetings.

(d) A State's single designated alternate may vote in the absence of the Governor at a meeting at which a quorum of Governors is required, but the alternate does not count toward establishing a quorum.

(e) An alternate may vote in the event of the absence, death, disability, removal, or resignation of the State member or Federal Cochairman for which he is an alternate.

(f) The Federal Cochairman shall not vote in the election of a State Cochairman or on the determination of the share of administrative expenses to be contributed by each State.

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6. New Parts 551 and 552 are added to read as follows:

PART 551—REGIONAL TRANSPORTATION

Sec.

551.1 Authority and purpose.
551.2 Studies and investigations.
551.3 Regional transportation networks.
551.4 Transportation demonstration projects.
551.5 Grants for planning, construction, purchase of equipment and operation of demonstration projects.
551.6 Construction or equipment of any component of a regional transportation demonstration projects.
551.7 Project financing.
551.8 Limitation on funds.
551.9 Eligible grant applicants.
551.10 Transfer of funds.
551.11 Records retention.

AUTHORITY: 42 U.S.C. 3192; 42 U.S.C. 3211; Executive Order 11386 (December 28, 1967); and Department of Commerce Organization Order 15-5 (August 30, 1975).

§ 551.1 Authority and purpose.

Section 513 of the Act (42 U.S.C. 3192) authorizes each regional commission, with the assistance of the Secretary of Transportation, to conduct investigations and studies of the region's transportation needs, to make grants for the planning of regional transportation networks, and to make grants for the construction, purchase of equipment, and operation of transportation demonstration projects.

§ 551.2 Studies and investigations.

(a) Each regional commission, with the assistance of the Secretary of Transportation, is authorized to conduct and facilitate full and complete investigations and studies of the transportation needs of its economic development region established under section 501 (42 U.S.C. 3181) of the Act.

(b) Such studies and investigations should analyze the effectiveness of regional transportation systems for meeting purposes of the Act.

(c) Information gathered from such studies and investigations should determine the types of transportation facilities needed in the region and be of value in planning for such transportation facilities.

§ 551.3 Regional transportation networks.

Each regional commission, with the assistance of the Secretary of Transportation, is authorized to make grants for the planning of regional transportation networks.

(a) The plans for these transportation networks should develop the proper mix of all transportation modes so as to best serve the economic, social, and environmental interests of the region.

(b) As the regional commissions study and plan their transportation systems, they should not only plan new systems but should study existing transportation programs and attempt to integrate their plans with these ongoing transportation programs.

§ 551.4 Transportation demonstration projects.

A regional transportation demonstration project should meet the following requirements:

(a) Responds to an identified transportation need or problem in the region.

(b) Possesses innovative characteristics for the area or region.

(c) Has objectives which are realistically attainable.

(d) May provide a useful model for others to emulate.

(e) Attracts other resources to assist in meeting a part of the cost and the total costs shall be reasonable in relation to the need for the project and the benefits to be gained.

§ 551.5 Grants for planning, construction, purchase of equipment and operation of demonstration projects.

Each regional commission, with the assistance of the Secretary of Transportation, is authorized to make grants for the construction, purchase of equipment, and operation of transportation demonstration projects. Such funds:

(a) Should be used for projects which possess new or refined organizational, operational, or technical approaches to meet regional transportation needs.

(b) May be used for payment of operating deficits.

(c) Should not be used in lieu of private capital particularly to construct facilities although useful to the development of a particular resource of the various regions.

§ 551.6 Construction or equipment of any component of a regional transportation demonstration project.

(a) No grant for the construction or equipment for any component of a demonstration transportation project shall exceed 80 percent of such cost.

(b) The Federal contribution may be provided entirely from funds authorized under section 513 of the Act (42 U.S.C. 3192) or in combination with funds authorized under other Federal grant-in-aid programs for the construction of transportation facilities.

(c) The Federal portion of project costs shall not exceed 80 percent of project costs and funds authorized under section 513 of the Act may be used to increase the Federal share of any such project to 80 percent of the cost of such facilities.

§ 551.7 Project financing.

Grants under this part shall be made solely out of funds specifically appropriated for the purpose of carrying out Title V of the Act and shall not be taken into account in the computation of the allotments among the States made pursuant to any other provisions of law.

§ 551.8 Limitation on funds.

In carrying out this part no regional commission shall expend more than $5,000,000 in any one fiscal year.

§ 551.9 Eligible grant applicants.

(a) States in the region, alone or with another member State, as well as any political subdivision of the States.

(b) Agencies of State and local governments.

(c) Local multijurisdictional or State public transportation authorities.

(d) State or Federally licensed or certificated common carriers that the commission may approve.

(e) Such other institutions or organizations permitted by law and approved by the commission.

§ 551.10 Transfer of funds.

When the contribution is supplied by the commission and is provided in combination with funds available under other Federal grant-in-aid programs, the Federal Cochairman will, where appropriate, transfer funds for the construction, purchase of equipment, and operation (including payment of operation deficits) of such projects to the basic Federal grant agency administering the grant program or project being supplemented pursuant to a grant agreement between the Federal Cochairman and the appropriate official of the basic agency.

§ 551.11 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 552—ENERGY DEMONSTRATION PROJECTS AND PROGRAMS

Sec.

552.1 Authority and purpose.
552.2 Regional energy policy.
552.3 Energy-related demonstration programs and projects.
552.4 Grants for demonstration programs and projects.
552.5 Limitation on funds.
552.6 Transfer of funds.
552.7 Eligible grant applicants.
552.8 Records retention.

AUTHORITY: 42 U.S.C. 3194; 42 U.S.C. 3211; Executive Order 11386 (December 28, 1967); and Department of Commerce Organization Order 15-5 (August 30, 1975).

§ 552.1 Authority and purpose.

Section 515 of the Act (42 U.S.C. 3194) authorizes each regional commission to carry out energy-related demonstration projects and programs. Each regional commission should develop a regionwide strategy for (a) anticipating the effects of alternative energy policies, and practices, (b) planning for accompanying growth and change so as to maximize social and economic benefits and minimize the social and environmental costs, and (c) implementing programs and projects to be carried out in the region by Federal, State and local government agencies in a coordinated way so as to better meet the special problems generated in the region by the Nation's energy needs and policies. Such special problems include those related to transportation, housing, community facilities and human services.

§ 552.2 Regional energy policy.

To formulate regional energy policies, the Federal Cochairmen and the regional commissions shall work closely with those Federal and State agencies having primary responsibility for developing national energy policy and basic enegy research and development.

§ 552.3 Energy-related demonstration programs and projects.

Each regional commission is authorized to carry out energy-related demonstration projects and programs within its region, including programs and projects addressing the social, economic, and environmental impact of energy development, requirements, and utilization. An energy-related demonstration project should meet the following requirements:

(a) Responds to an identified energy impact or problem in the region.

(b) Possesses innovative characteristics for the area or region.

(c) Has objectives which are realistically attainable.

(d) May provide a useful model for others to emulate.

(e) Attracts other resources to assist in meeting a part of the cost and the total costs should be reasonable in relation to the need for the project and the benefits to be gained.

§ 552.4 Grants for demonstration programs and projects.

(a) Grants shall be made only to those projects which are developed through regional planning designed to identify the effects of regional resource development, requirements, utilization, and impact.

(b) The Federal contribution may be approved entirely from funds authorized under section 515 of the Act (42 U.S.C. 3194) or in combination with funds authorized under other Federal grant-in-aid programs.

§ 552.5 Limitation on funds.

In carrying out this part no regional commission shall expend more than $5,000,000 in any one fiscal year.

§ 552.6 Transfer of funds.

When the contribution is supplied by the commission and is provided in combination with funds available under other Federal grant-in-aid programs, the Federal Cochairman will, where appropriate, transfer funds for such projects to the basic Federal grant agency administering the grant program or project being supplemented pursuant to a grant agreement between the Federal Cochairman and the appropriate official of the basic agency.

§ 552.7 Eligible grant applicants.

(a) States in the region alone or with another member State as well as any political subdivision of the States.

(b) Agencies of State and local governments.

(c) Such other institutions or organizations permitted by law and approved by the commission.

§ 552.8 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United

States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

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8. Two new Parts, Part 553 and Part 554, are reserved as follows:

PART 553—HEALTH AND NUTRITION DEMONSTRATION PROJECTS [Reserved]

PART 554—EDUCATION DEMONSTRATION PROJECTS [Reserved]

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9. A new Part 555 is added to read as follows:

PART 555—INDIGENOUS ARTS AND CRAFTS DEMONSTRATION PROJECTS

Sec.
555.1 Authority and purpose.
555.2 Eligible grant applicants.
555.3 Limitation on funds.
555.4 Records retention.

AUTHORITY: 42 U.S.C. 3194; 42 U.S.C. 3211; Executive Order 11386 (December 28, 1967); and Department of Commerce Organization Order 15-5 (August 30, 1975).

§ 555.1 Authority and purpose.

Pursuant to section 515 of the Act (42 U.S.C. 3194), each regional commission is authorized to carry out demonstration projects within its region in connection with the development and stimulation of indigenous arts and crafts of the region.

§ 555.2 Eligible grant applicants.

(a) States in the region, alone or with another member State, as well as any political subdivision of the States.

(b) Agencies of State and local governments.

(c) Indian tribe, band, group, pueblo recognized by the Federal Government or by the States of the region in which the tribe, band, group, or pueblo is located.

(d) Nonprofit or tax supported organizations established to foster and encourage development of indigenous arts and crafts.

§ 555.3 Limitation on funds.

In carrying out this part no regional commission shall expend more than $2,500,000 in any one fiscal year.

§ 555.4 Records retention.

(a) The commission shall keep, and shall require its grantees and contractors to keep, such records as will fully disclose the amount and disposition of the total budgeted funds, the purpose of the undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as may be necessary. Records pertaining to the expenditures of Federal funds should be preserved for a period of not less than three (3) years following disbursement of funds.

(b) The Secretary of Commerce and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, and documents, papers, and records of the commission pertaining to the expenditure of Federal funds that will facilitate an effective audit.

PART 560—SUPPLEMENTS TO FEDERAL GRANTS-IN-AID

10. Section 560.7 is revised to read as follows:

§ 560.7 Definition of Federal grant-in-aid programs.

The term "Federal grant-in-aid programs" as used in this subpart means all Federal grant-in-aid programs in existence on or before September 30, 1979, assisting in the acquisition or development of land, the construction or equipment of facilities, or other community or economic development or economic adjustment activities, including but not limited to grant-in-aid programs authorized by the following Acts: Federal Water Pollution Control Act; Watershed Protection and Flood Prevention Act; titles VI and XVI of the Public Health Services Act; Vocational Education Act of 1963; Library Services and Construction Act; Federal Airport Act; Airport and Airway Development Act of 1970; part IV of title III of the Communications Act of 1934; titles VI (part A) and VII of the Higher Education Act of 1965; Land and Water Conservation Fund Act of 1965; National Defense Education Act of 1958; Consolidated Farm and Rural Development Act; and titles I and IX of the Public Works and Economic Development Act.

Dated: December 14, 1976.

JOHN W. EDEN,
Acting Special Assistant for Regional Economic Coordination.

[FR Doc.76-37413 Filed 12-20-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Parts 401, 422]

[Regs. No. 1, 22]

DISCLOSURE OF CERTAIN MEDICARE REPORTS AND RECORDS

Proposed Rulemaking

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553) that the amendments to the regulations set forth in tentative form are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments would revise the requirement for consultation, prior to disclosure of the name of a provider of services, a physician, or other person furnishing services to beneficiaries under title XVIII of the Social Security Act who has been found by a carrier or intermediary to have been engaged in a pattern of furnishing services to such beneficiaries which are substantially in excess of their medical needs. The proposed amendments provide for consultation with an appropriate program review team appointed by the Secretary pursuant to section 1862(d)(4) of the Social Security Act, or with a Professional Standards Review Organization where it has been authorized to assume the responsibilities of a program review team, as an alternative to prior consultation with a professional medical association functioning external to program administration or with a State medical authority.

Regulation No. 1 and Regulation No. 22 of the Social Security Administration currently provide in § 401.3(v)(2) and in § 422.435(b), respectively, for the release of the names of physicians, suppliers, and other providers of services who the Social Security Administration determines, after consultation with a professional medical association functioning external to program administration, to have provided services substantially in excess of beneficiaries' needs.

The regulations do not require that we disclose the names of the providers, physicians, etc., in every case in which there is found excessive rendering of services. Only in those situations where overutilization represents a pattern of furnishing services substantially in excess of the beneficiaries' medical needs may names be disclosed and, of course, in such cases, there must be consultation with professional medical associations prior to disclosure. A finding against a physician, supplier, or other provider of services in the context of this provision of the law is based on a pattern of furnishing services substantially in excess of beneficiaries' medical needs; a one-time case or occasional situation involving overutilization is not the basis for release of the name of the physician, practitioner, or other provider, or supplier involved. The right of that individual to the protection of constitutional due process is built into the procedure. Such individual is given appropriate and timely advance notice of the issues under scrutiny, and is afforded the opportunity to respond to the issues by having personal and direct input into the evaluation and decision-making process. The current regulations were developed because of a belief that the public has an interest in knowing the identity of those found to have furnished excessive services under the Medicare program, as well as those found actually to have engaged in fraudulent practices. This approach is consistent with the medical profession's generally acknowledged position on the public's right to pertinent information about the professional conduct of its members, and is a logical and pragmatic application of the self-policing principles traditionally espoused by the medical community. The proposed amendments to the regulations will include program review teams including Professional Standards Review Organizations when so authorized as one mechanism for providing professional input as well as allowing the use of professional medical groups that have arrangements with Medicare contractors to provide "peer review."

The current requirement that consultation be with a professional medical association functioning external to program administration was incorporated into the regulation to secure a professional medical opinion independent of the Medicare carrier's own medical staff or consultants before any name is disclosed. The requirement takes no cognizance of any medical group involved in any way in program administration. The program review teams provided for by section 1862(d) of the Social Security Act, which was added to the Act by section 229 of Pub. L. 92–603, determine whether physicians, other practitioners, providers, and suppliers of services have been engaged in conduct for which they may be excluded or terminated from participation in the Medicare program, i.e., furnishing services to beneficiaries substantially in excess of their medical needs and other types of program abuse such as overchargng, furnishing inferior or harmful services, or making false statements to obtain payment. A determination of substantial overutilization is a common ingredient of both disclosure and termination of providers and exclusion from coverage under the Medicare program of items provided and services rendered by physicians, providers, and suppliers of services. It would, therefore, be more efficient administratively to combine these determinations. It is necessary, therefore, to amend Regulation No. 1 and Regulations No. 22, Subpart E to permit the use of program review teams appointed by the Secretary pursuant to section 1862(d)(4) of the Social Security Act, or of Professional Standards Review Organizatioins when so authorized, to review material pertinent either to disclosure or termination.

The amendments add § 401.3(v)(3) to Regulation No. 1 and § 422.435(b)(3) to Regulations No. 22 to provide for disclosure to the public of the names of providers, physicians, or other suppliers of services who have been given a written notice of a determination of exclusion or termination pursuant to § 405.315a (e) or §405.614(b) of Regulations No. 5 which implements sections 1862(d)(2) and 1866(b)(2) of the Act. In addition, the language of §§ 401.3(v)(1) and 422. 435(b)(1) is being revised to allow disclosure of the identity of any provider, physician, or other supplier of services under title XVIII found civilly liable for presenting to the Federal Government false, fictitious, or fraudulent claims, bills, certificates, etc., in connection with the Medicare program and to take into account the expanded criminal sanctions available for prosecution of frauds perpetrated in connection with the Medicare program. The individuals, suppliers, and providers whose identities are disclosed under these provisions are guilty of more serious, though sometimes similar, violations than those indicated under §§ 401.3(v)(2) and 422.435(b)(2). We feel that the public should continue to be notified of lesser violations even though they are not serious enough to warrant exclusion or termination from the program.

Prior to the final adoption of the proposed amendment, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203 on or before February 4, 1977.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201.

The proposed amendments are to be issued under the authority contained in sections 205, 1102, 1106, 1862(d), 1866 (b), and 1871; 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended, 86 Stat. 1452, as amended, 79 Stat. 327, and 79 Stat. 331; 42 U.S.C. 405, 1302, 1306, 1395y(d), 1395cc(b), and 1395hh.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: September 2, 1976.

JAROLD A. KIEFFER,
Acting Commissioner of Social Security.

Approved: December 10, 1976.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Parts 401 and 422 of Chapter III of Title 20 of the Code of Federal Regulations are amended as set forth below:

1. Section 401.3(v) is revised to read as follows:

§ 401.3 Disclosure of information relating to individuals.

Disclosure of information relating to individuals is hereby authorized in the following cases and for the following purposes:

* * * * *

(v) To the public: The name of any physician, or other individual furnishing services to beneficiaries under title XVIII of the act who—

(1) Has been found guilty by a Federal court of a criminal offense described in 42 U.S.C. 1395mn or a criminal offense involving conduct in connection with submitting claims for payment pursuant to title XVIII under any other provision of Federal law, or has been adjudged civilly liable for damages by a Federal court for conduct in connection with submitting false claims pursuant to title XVIII; or

(2) Has been found by a carrier or intermediary, after consultation with a professional medical association functioning external to program administration, or an appropriate program review team appointed by the Secretary pursuant to section 1862(d)(4) of the Social Security Act, or a Professional Standards Review Organization where the Professional Standards Review Organization has been authorized, pursuant to § 405.315b(f), to assume for its area the responsibilities of §§ 405.315a(b)(3) and 405.614(a)(5)(iii), or, if appropriate, the State medical authority, to have been engaged in a pattern of furnishing services to such beneficiaries which are substantially in excess of their medical needs; except that the name of any such individual shall not be disclosed pursuant to a finding under this paragraph (v)(2) of this section unless such individual has first been afforded a reasonable opportunity to offer evidence on his behalf; or

(3) Has been given a written notice of a determination of exclusion or termination under § 405.315a(e) or § 405.614(b) of this chapter.

2. Paragraph (b) of § 422.435 is revised to read as follows:

§ 422.435 Release of title XVIII information to the public.

The following shall be made available to the public under the conditions specified:

* * * * *

(b) The name of any provider of services, physician, or other person furnishing services to beneficiaries under title to title XVIII of the Act who—

(1) Has been found guilty by a Federal court of a criminal offense described in 42 U.S.C. 1395nn or a criimnal offense involving conduct in connection with submitting claims for payment pursuant to title XVIII under any other provision of Federal law, or has been adjudged civilly liable for damages by a Federal court for conduct in connection with submitting false claims pursuant to title XVIII; or

(2) Has been found by a carrier or intermediary, after consultation with a professional medical association functioning external to program administration, or an appropriate program review team appointed by the Secretary pursuant to section 1862(d)(4) of the Social Security Act, or a Professional Standards Review Organization where the Professional Standards Review Organization has been authorized, pursuant to § 405.-315b(f), to assume for its area the responsibilities of §§ 405.315a(b)(3) and 405.614(a)(5)(iii), or, if appropriate, the State medical authority, to have been engaged in a pattern of furnishing services to such beneficiaries which are substantially in excess of their medical needs; except that the name of any such person shall not be disclosed pursuant to a finding under this paragraph (b)(2) of this section unless such person has first been afforded a reasonable opportunity to offer evidence on his behalf; or

(3) Has been given a written notice of a determination of exclusion or termina-

tion under § 405.315a(e) or § 405.614(b) of this chapter.

* * * * *

[FR Doc.76-37382 Filed 12-20-76;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1309]

PAPAVER BRACTEATUM

Extension of Time for Comments and Hearing

On November 19, 1976, a notice of proposed production and control of Papever Bracteatum was published in the FEDERAL REGISTER (41 FR 51036). All interested parties were invited to comment or object to the proposal on or before December 21, 1976.

Pursuant to the authority under sections 301 and 501(b) of the Controlled Substances Act (21 U.S.C. 821 and 871 (b)) and by § 0.100 of Title 28, Code of Federal Regulations, to promulgate and enforce rules, regulations and procedures relating to drug abuse and drug trafficking, the Administrator of the Drug Enforcement Administration has decided to extend the time for submissions of comments to January 28, 1977. Further, public hearings will be held on January 27 and 28, 1977, for the purpose of hearing comments on the notice of proposed production and control of Papaver Bracteatum in the United States. The hearings will be held before Administrative Law Judge Francis L. Young in the DEA Hearing Room, 12th Floor, 1405 "I" Street NW., Washington, D.C., from 9:30 a.m. through 12:30 p.m. and 2:00 p.m. through 5:00 p.m. All persons desiring to furnish comments at the hearing shall provide written notice of intent to the Administrative Law Judge, Drug Enforcement Administration, United States Department of Justice, 1405 "I" Street NW., Washington, D.C. 20537, on or before January 14, 1977. All requests to present testimony shall include a brief summary as to the position to be taken and the approximate time needed to present the testimony.

The following procedures will be followed during the hearings. Speakers will be limited to 30 minutes. Written statements in addition to or in lieu of oral presentations will be accepted. There will be no relinquishing of time by one speaker to another. The hearings will not be adversary proceedings, and will be conducted in an informal but orderly manner in accordance with the directions of the Administrative Law Judge. The Administrative Law Judge, the Administrator and the Administrator's counsel may ask questions of speakers in order to clarify positions and to elicit particulars as are peculiarly within the pleader's knowledge.

Testimony at the hearing shall be reported verbatim. As soon as practicable after the hearings, the Administrative Law Judge shall prepare a report containing a synopsis of the testimony, his recommended findings of fact, and his recommended decision on the proposed production and control of Papaver Bracteatum in the United States.

All written comments on the notice of November 19, 1976, that are received prior to the public hearings shall be submitted for the record at the beginning of the hearings by the Administrative Law Judge. Testimony presented at the hearing shall relate to whether or not the production of Papaver Bracteatum in the United States is consistent with the public interest and with United States obligations under international treaties, conventions and protocols. If during the hearing, a dispute should develop as to the legal authority of the Administrator to issue a final order to accomplish a development of Papaver Bracteatum production in the United States, the Administrative Law Judge shall not hear such arguments, but shall direct that the matter be set for a separate hearing under the regular hearings procedures in Subpart D of Part 1316, Title 21, Code of Federal Regulations.

Dated: December 16, 1976.

PETER B. BENSINGER,
Administrator.

[FR Doc. 76-37494 Filed 12-20-76; 8:45 am]

VETERANS ADMINISTRATION

[38 CFR Part 1]

RELEASE OF INFORMATION FROM VA RECORDS OTHER THAN CLAIMANT RECORDS

Schedule of Fees

Notice is hereby given that the Veterans Administration is considering amending Part 1, Title 38 of the Code of Federal Regulations to change the schedule of fees indicated in § 1.555(h)(2), pertaining to charges for records search. The proposed amendment is issued to increase the search charge for the release of information from other than claimant records. This increase will reflect more correctly the cost to the Veterans Administration of performing document searches for release of information from other than claimant records.

Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420. All relevant material received before January 20, 1977, will be considered. All written comments received will be available for inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any Veterans Administration field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is hereby given that it is proposed to make this regulation effective on the date of final approval.

The Veterans Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Approved: December 15, 1976.

By direction of the Administrator.

A. J. SCHULTZ, Jr.,
Associate Deputy Administrator.

In § 1.555, paragraph (h)(2) is revised to read as follows:

§ 1.555 Fees.

* * * * *

(h) Schedule of fees: * * *

(2) Searching, per hour..... $4.45

(No charge for the first hour or fraction thereof.)

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[FR Doc.76-37489 Filed 12-20-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 51]

[FRL 660-6]

REVIEW OF NEW SOURCES AND MODIFICATIONS

Preparation, Adoption and Submittal of Implementation Plans; Requirements

The Environmental Protection Agency intends to amend 40 CFR Part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans) to modify and clarify the requirements for preconstruction review of new or modified air pollution sources (40 CFR 51.18). The current version of 40 CFR 51.18 requires that each State Implementation Plan (SIP) under the Clean Air Act contain a regulation requiring preconstruction review and disapproval of all new or modified air pollution sources which would "interfere with" the attainment or maintenance of a national ambient air quality standard (NAAQS).

The tentative proposals outlined below are closely related to the Interpretative Ruling published elsewhere in today's FEDERAL REGISTER (at 41 FR 55524). The ruling provides in general that, under 40 CFR 51.18, a major new source may locate in an area violating a NAAQS only if stringent conditions can be met. These conditions are designed to insure that the new source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions will be obtained from existing sources; and that there will be progress toward achievement of the NAAQS. (The conditions of the ruling are hereinafter collectively referred to as the "emission offset requirements.")

Interested persons are invited to participate in the development of the proposed rules by submitting written comments on the points raised in this notice (preferably in triplicate) to: Environmental Protection Agency, Control Programs Development Division (MD–15), Research Triangle Park, N.C. 27711. Persons commenting on this advance notice are also encouraged to comment on the basic policies and detailed provisions of the above-referenced Interpretative Ruling, and to prepare a single set of comments addressing both this notice and the ruling. All comments received on or before February 15, 1977, will be considered as EPA develops proposed modifications or clarifications. All comments submitted will be available for public inspection at EPA's Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

DEFINITION OF "MAJOR" SOURCE AND EFFECT OF DEFINITION

EPA is contemplating a modification to 40 CFR 51.18 which would provide States with more explicit guidance on how they may focus their preconstruction review program resources on sources which have the greatest impact on air quality. The contemplated change would allow States to establish a two-level system for reviewing new sources. The complexity of the review would depend on the size of the proposed source.

States have always been allowed to exempt significant sources from review altogether, although firm national guidance has not been provided as to what constitutes an insignificant source. To remedy this, EPA proposed on July 8, 1975 (40 FR 28629) a list of such insignificant sources. Further action on this proposal has been deferred pending the more comprehensive amendments to § 51.18 outlined in this notice. Any additional comments on the July 8, 1975, proposals are solicited; comments previously submitted have been retained for consideration and need not be reimbursed.

Once the sources exempt from review altogether have been defined, the contemplated changes to § 51.18 would allow the remaining sources to be separated into two categories for review purposes. Those sources defined as "major" sources would be subject to an air quality analysis, and it found to exacerbate a violation of a NAAQS, would be subject to the emission offset requirements discussed above. In addition, only major sources would be subject to the public comment requirements set forth in 40 CFR 51.18.

Smaller sources would be reviewed to ensure compliance with applicable SIP emission limitations but would not be subject to the air quality analysis, public comment, and emission offset requirements. Another option would be to require the use of the lowest achievable emission rate (as defined in Part IV.A.1 of the ruling) for these smaller sources if they would be located in an area that exceeds a NAAQS.

Comments on the over-all approach outlined above are solicited, including an appropriate definition of "major" source. Of particular interest to the Agency are comments on the resource requirements related to any recommended definition of major source (i.e., number and kinds of sources subject to the emission offset requirements, man-hours required per review, etc.), and the percent of total new emissions which would be emitted by major sources under the recommended definition. To provide a basis for comment, the following tentative definition is offered:

"Major source" shall, as a minimum, cover any structure, building, facility, installation or operation (or combination thereof) for which the allowable emission rate is equal to or greater than the following:

	Tons per year
Particulate matter	50
Sulfur oxides	50
Nitrogen oxides	50
Non-methane hydrocarbons (organics)	50
Carbon monoxide	500

Similarly a "major modification" shall include a modification to any structure, building, facility, installation or operation (or combination thereof) which increases the allowable emission rate by the amounts set forth above. A proposed new source with an allowable emission rate exceeding the above amounts is considered a major source, even though such a source may replace an existing source with the result that the net additional emissions are increased by less than the above amounts.

Where a source is constructed or modified in increments which individually do not meet the above criteria, and which are not a part of a program of construction or modification in planned incremental phases previously approved by the reviewing authority, all such increments shall be added together for determining applicability under this definition. Moreover, where there is a group of proposed sources which individually do not meet the above criteria, but which would be constructed in substitution for a major source, the group should be collectively reviewed as a major source.

Allowable annual emissions shall be based on the applicable New Source Performance Standard (NSPS) set forth in 40 CFR Part 60 or the applicable SIP emission limitation, whichever is less, and the maximum annual rated capacity of the source. If the source is not subject to either a NSPS or SIP emission limitation, annual emissions shall be based on (1) the maximum annual rated capacity, and (2) the emission rate agreed to by the source as a permit condition.

The following shall not, by themselves, be considered modifications:

(1) Maintenance, repair, and replacement which the reviewing authority determines to be routine for a source category.

(2) An increase in the hours of operation, unless limited by previous permit conditions.

(3) Use of an alternative fuel or raw material, if the source is designed to accommodate such alternative use (unless limited by previous permit conditions).[1]

(4) Change in ownership of a stationary source.

Regardless of how "major source" is defined in a nationwide context, the applicability of the emission offset requirements may need to be extended to smaller sources in certain areas, depending on the magnitude of the air quality problem, growth rate and source mix, resources and technical expertise available to the reviewing authority, etc. Comments on whether more comprehensive reviews should be required in certain areas and the specific criteria for selecting these areas are also requested.

It should be noted that the above proposals relate only to reviews under 40 CFR 51.18; EPA is not in this notice suggesting the need for changes to its regulations for prevention of significant deterioration (40 CFR 52.21), new source performance standards (40 CFR part 60), or hazardous emission standards (40 CFR part 61). These regulations are already sufficiently precise as to their scope of coverage.

GEOGRAPHIC APPLICABILITY OF EMISSION OFFSET REQUIREMENTS FOR HYDROCARBON SOURCES

Because widespread violations of the NAAQS for photochemical oxidants have been found even in remote rural areas, some have assumed that hydrocarbon[2] control programs (including emission offset requirements) are necessary in all areas where there are violations of the photochemical oxidant NAAQS. Since photochemical oxidants or their precursors can be transported long distances, the focus for regulatory action must be on areas where the precursors and photochemical oxidants originate, not on areas where the photochemical oxidant levels are measured. In addition, it appears that in areas where there are considerably more hydrocarbons present than nitrogen oxides (high ratio of hydrocarbon-to-nitrogen oxides), changes in the levels of hydrocarbons present may result in relatively insignificant changes in the level of photochemical oxidants locally produced. Generally, such areas are found where the local emissions of nitrogen oxides are small, such as in rural areas.

The above findings, along with other studies, present convincing evidence that most of the rural photochemical oxidant problem results from the transport of both photochemical oxidant and its precursors from urbanized areas. Therefore, the photochemical oxidant reduction benefits to be gained from implementing the emission offset requirements for hydrocarbon sources locating in rural areas may be insignificant when compared to the benefits of focusing on the urbanized areas where most of the rural area problem originates.

[1] Preliminary comment indicates that although this exemption is already codified in general EPA regulations regarding modifications (40 CFR 52.01(d)(2)(iii)), it should not apply in areas which are in violation of a NAAQS. The argument is that the exemption would allow major pollution increases in non-attainment areas to go unchecked. The Administrator agrees that this is a problem that should be reviewed and specifically invites comments on the issue.

[2] Hydrocarbons are precursors to photochemical oxidants.

In urban areas, the ratio of hydrocarbons-to-nitrogen oxides tend to be low so that changes in levels of photochemical oxidants locally generated are quite sensitive to changes in the levels of hydrocarbon present. Thus, hydrocarbon emission control programs (including the emission offset requirements) wold be expected to be effective in reducing the amount of photochemical oxidants locally generated in the urban area, thus also reducing the amount transported to neighboring rural areas.

An investigation is underway to determine the extent of the geographical area around urbanized locations where hydrocarbon emission control programs will be most effective in reducing photochemical oxidant levels. Early findings of this investigation indicate that these areas may be proportional to city size and may extend up to 85 miles from major metropolitan areas. In addition, upwind-downwind measurements around smaller urban areas and isolated point sources of hydrocarbons and nitrogen oxides indicate that there is little if any increase in observed photochemical oxidant concentrations as a result of the emissions from such smaller urban areas and isolated point sources. Although very limited data are available, it appears that urban areas with a population less than 200,000 produce little, if any, measurable increase in photochemical oxidant levels.

If these findings are confirmed, the policy evolving from such data might indicate that only major hydrocarbon sources locating within a specified distance of urban areas larger than 200,000 population would be subject to the emission offset requirements. Sources providing the offset would have to be located within the same specified area.

Comments on this and other possible criteria for determining the geographic applicability of the emission offset requirements for hydrocarbon sources are solicited. Comments are particularly desired on the need for obtaining emission offsets in remote rural areas that are, in most cases, exceeding the photochemical oxidant NAAQS and on the availability of emission offsets in such areas.

A preliminary draft of a report has been prepared which sets forth in more detail the basis for the tentative conclusions outlined above. This draft has been reviewed for its technical content by a limited number of scientific experts outside the Agency. Comments have been received and the report is being revised based on these comments. The revised report will be made available shortly for public inspection at EPA's Public Information Reference Unit, 401 M Street, S.W., Washington D.C. 20460. A notice of availability will be published in the FEDERAL REGISTER. Persons preparing comments on this notice may wish to refer to the report and comment on it.

"FUGITIVE DUST" ISSUES

There has been considerable concern about the location of major stationary sources of particulate matter in NAAQS non-attainment areas where fugitive dust has been determined to be the major cause of non-attainment. This concern has lead to several questions regarding the impact of fugitive dust sources (i.e., traffic on unpaved roads, construction, farming) upon existing air quality levels in both urban and rural areas.[3] This is due in part to the particle size distribution within fugitive dust areas. While data are relatively limited, they indicate that within fugitive dust areas a large portion of the total suspended particulate (TSP) collected upon the hi-volume air sampler is comprised of larger sized particles. In addition, there is a preponderance of larger sized particles associated with these fugitive dust sources. There is some question as to whether these larger sized particles by themselves cause any significant health or welfare related problems since both health and welfare criteria (especially visibility) are closely related to smaller sized particulate material.

The Agency currently believes that the fugitive dust problem within urban areas is more critical and should receive higher attention than similar type problems within rural areas. This lower priority of rural areas is based upon the belief that the toxic fraction of fugitive dust in areas without the impact of man-made pollutants is likely to be small. Fugitive dust sources in such areas include dust from deserts, arid lands, sparsely vegetated land, exposed but vacant lots in rural communities, dust from sparsely traveled unpaved roads and unpaved residential driveways, and other such conditions common in rural America. Fugitive dust in these areas is typically native soil that for various reasons becomes airborne. It is generally not exposed to potential contamination of industrial fallout or subject to adsorption of gaseous pollutants, which commonly occur in urban atmospheres. This analysis is supported by the belief that in rural areas relatively free from point emission sources, such as many areas of the Southwest, the TSP may be composed largely of non-toxic substances, such as silicates; although certain organic material, such as fungi and aeroallergenes, may be present in specific areas. No epidemiological studies have been conducted in sparsely populated areas where the TSP concentration may be high due to fugitive dust. In general, the population is too small to provide a statistically significant sample. Detailed information on the chemical composition of the TSP in these areas is not available; however, the toxic fraction is likely to be small.

Fugitive dust in urban areas, on the other hand, is a relatively different phenomenon. While mineral matter is still the primary ingredient, it can no longer be considered as native soil. In urban areas, it is contaminated to a measurable degree by various components highly suspect in health impairment. Urban fugitive dust contains fallout from industrial and combustion related processes, lead from automotive exhaust, measurable rubber tire particles, and other components associated with an advanced technologically-dependent community. Further contamination may result in urban areas from adsorption of harmful gases or adhesion of urban fine particulate matter on fugitive dust particles, making fugitive dust particles carriers of potentially more harmful and potent ingredients. In summary, while there is a need to be concerned with some aspects of the native dust problem itself within urban areas, the major concern is the potential for that native dust to be contaminated by more harmful substances than the dust itself, thereby causing the fugitive dust sources to contribute significantly to the level of harmful particulates found within urban areas.

The Agency is therefore considering a new source review policy which would recognize the differences between fugitive dust in urban and rural areas. Consequently, for new sources of particulate matter proposing to construct in rural areas that exceeding the TSP NAAQS, it is contemplated that they be allowed to construct without being subject to the emission offset requirements so long as they meet new source performance standards (NSPS) set forth in 40 CFR Part 60 or best available control technology, if no NSPS is applicable, and so long as their own emissions, plus consideration of "non-urban background"[4] and emissions from other stationary sources in the vicinity of the proposed location, do not cause violations of the NAAQS.

For new source review in NAAQS non-attainment urban areas, the emission offset requirements would be applicable. Since fugitive dust is recognized as a legitimate air pollution problem in urban areas, it would seem appropriate to allow emission offset credit to come from existing fugitive emission sources.

Comments on all aspects of the tentative approach outlined above are solicited. Comments are specifically solicited on the definition of "urban" and "rural" areas, on the issue of how large new sources of fugitive dust (i.e., strip mines, tailings operations) are to be considered when locating in rural areas, and whether (and to what extent) emission offsets of conventional stack emissions against fugitive dust-type sources should be permitted.

This advance notice of proposed rulemaking is issued under the authority of sections 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 1857c-5 and g).

Dated: December 15, 1976.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.76-37345 Filed 12-20-76;8:45 am]

[3] The term "fugitive dust" should be distinguished from the term—"fugitive emissions." The latter term generally refers to industrial process emissions which do not pass through a stack or chimney.

[4] Usually based upon the lowest measured annual average TSP air quality concentration in the broad area where the new source will be located, approximately 30 ug/m^3.

[40 CFR Part 52]

[FRL 661-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Sulfur Content of Fuel Burned In Central Massachusetts Air Quality Control Region; Comments Closing Date

On November 17, 1976, the Regional Administrator published notice in the FEDERAL REGISTER (41 FR 50700) of a proposed rulemaking concerning a change in the sulfur content of fuel burned in the Central Massachusetts Intrastate Air Quality Control Region. That notice inadvertently omitted to state when the period for submission of comments would end. This notice is being published in order to notify the public of the date by which all comments must be submitted.

Accordingly, notice is hereby given that the period for submitting comments on such proposed rulemaking will end on December 28, 1976.

Dated: December 13, 1976.

LESTER C. SUTTON,
Acting Regional Administrator.

[FR Doc.76-37485 Filed 12-20-76;8:45 am]

[40 CFR Part 52]

[FRL 661-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—NORTH CAROLINA

Proposed Plan Revisions

On May 31, 1972 (37 FR 10884), the Administrator approved the North Carolina plan to attain and maintain the national ambient air quality standards in that State. The State subsequently made a number of revisions in the plan's regulations to improve its effectiveness. On May 10 and May 13, 1976, after notice and public hearing, the North Carolina Environmental Management Commission adopted additional changes in its air pollution control regulations. These include adoption of Federal New Source Performance Standards; Revisions to Air Contaminants—Monitoring, Reporting; and Extension of Visible Emissions Regulation, respectively.

These changes were submitted as proposed implementation plan revisions to the Agency's Region IV office in Atlanta. The purpose of this notice is to describe the proposed changes in the North Carolina plan and to invite public comment on them.

The adopted Federal New Source Performance Standards would supersede current analogous State regulations on applicable pollutant-source combination.

The Revised Air Contaminants—Monitoring, Reporting regulations would bring present monitoring and reporting requirements in line with current air quality data needs and would conform to legislative mandate and federal requirements for state air quality implementation programs. These regulations would supersede 15 NCAC 2D .0600 (former Regulation 8). The proposed Revised Air Contaminants—Monitoring, Reporting regulation is a further revision of the amendments which were the subject of a public hearing September 17, 1975, but which were not adopted.

The present Regulation 15 NCAC 2D .0521 (former Regulation 2) requires that by July 1, 1976, all installations existing as of July 1, 1971, must meet a more stringent visible emissions standard (essentially Ringelmann No. 1 or equivalent capacity). It is proposed that the July 1, 1976 date be extended until April 1, 1977, in order to give the North Carolina Air Quality Council sufficient time to study and make recommendations on possible amendments to this Regulation.

The State of North Carolina has requested Delegation of Authority from EPA to enforce Federal New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants.

The Regional Office has approved the State's requests for Delegation of Authority and a Notice of Delegation will be published in the FEDERAL REGISTER in the near future.

Copies of the information submitted by North Carolina may be examined by the public during normal business hours at the following locations:

Air Programs Branch, Air & Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

North Carolina Environmental, Management Commission, P.O. Box 27687, Raleigh, North Carolina 27611.

Interested persons are encouraged to submit written comments on the North Carolina plan revisions. To be considered, such comments must be received on or before January 21, 1977, and should be addressed to D. Randall Mayfield of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the North Carolina plan.

(Section 110 of the Clean Air Act (42 U.S.C. 1857c-5)).

Dated: December 14, 1976.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.76-37486 Filed 12-20-76;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 AGRICULTURE

Forest Service

DESCHUTES NATIONAL FOREST ADVISORY COMMITTEE

Meeting

The Deschutes National Forest Advisory Committee will meet at Tony's Poco Toro, 221 NE Burnside, Bend, Oregon 97701, at 8:00 p.m. on Thursday, January 20, 1977.

The subject of this meeting will be, "Recent National Legislation Affecting the Management of the National Forest."

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor or Sandy Fergerson at 211 NE Revere, Bend, Oregon 97701, telephone (503) 382-6922. Written statements may be filed with the Committee before or after the meeting.

Dated: December 12, 1976.

EARL E. NICHOLS,
Forest Supervisor.

[FR Doc.76-37437 Filed 12-20-76;8:45 am]

KETTLE RANGE LAND USE PLAN

Availability of Draft Environmental Statement

The Notice of Availability for the Kettle Range Planning Unit, Colville National Forest, Washington, USDA-FS-R6-DES-(Adm.)-77-4, that appeared in the FEDERAL REGISTER Volume 41, Number 210, Friday, October 29, 1976, is corrected to extend the review period to February 18, 1977.

Dated: December 13, 1976.

ROBERT B. TERRILL,
Forest Supervisor.

[FR Doc.76-37436 Filed 12-20-76;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 30215, Order 76-12-92]

AIRBORNE FREIGHT CORP.

Order of Suspension and Investigation Regarding Nonacceptance of Poisonous Spiders, Reptiles and Insects

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of December, 1976.

By tariff revisions [1] issued November 17 and marked to become effective December 17, 1976, Airborne Freight Corporation (Airborne), an air freight forwarder, proposes to refuse to accept for carriage "(p)oisonous lizards, poisonous snakes, poisonous spiders and other poisonous reptiles and poisonous insects, excluding honeybees."

The forwarder claims that the proposed rule meets those in effect for United Air Lines, Inc., Delta Air Lines, Inc., Ozark Air Lines, Inc., and Southern Airways, Inc.; that although it is unable to determine the number of shipments of poisonous animals received over the past year, it believes none have been tendered in the last four months; and that no change in costs or revenues is anticipated.

In view of all relevant factors, the Board concludes that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, and should be investigated. The Board further concludes that it should be suspended pending investigation.

We believe that the proposed provisions will represent a significant decrease in the forwarder's common carrier obligations to carry upon reasonable request. Airborne makes no showing whatsoever that these poisonous creatures cannot be safely transported with proper packaging and handling, or that they constitute an undue threat to passengers or crew.

The forwarder claims that its proposed rule is the same as those in effect for several direct carriers; however, the rules of these carriers were suspended by the Board when filed and became effective only after the expiration of the 180-day suspension periods. Their lawfulness is pending in rules and practices relating to the Acceptance and Carriage of Live Animals in Domestic Air Freight Transportation, Docket 26310. In any event other direct carriers transport poisonous creatures and are available to carry Airborne's shipments.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. An investigation is instituted to determine whether the provisions described in the Appendix attached hereto, and rules, regulations, or practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to determine and prescribe the lawful provisions, and rules, regulation, and practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions described in the Appendix hereto, are suspended and their use deferred to and including March 16, 1977, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated Docket 30215 be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariffs and served upon Airborne Freight Corporation.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX

TARIFF C.A.B. No. 21, ISSUED BY AIRBORNE FREIGHT CORPORATION

Rule No. 20(D)(2) on 50th Revised Page 10. The suspension of Rule No. 20(D)(2) does not stay the cancellation of 48th Revised Page 10.

TARIFF C.A.B. No. 42, ISSUED BY AIRBORNE FREIGHT CORPORATION

Rule No. 10(I)(2) on 6th Revised Page 9. The suspension of Rule No. 10(I)(2) does not stay the cancellation of 4th Revised Page 9.

[FR Doc.76-37468 Filed 12-20-76;8:45 am]

[1] Revisions to Airborne Freight Corporation, Tariffs C.A.B. Nos. 21 and 42.

AIR TRANSPORT ASSOCIATION

[Docket 29949; Order 76-1288]

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of December, 1976.

Multiple revisions to Restricted Articles Tariff No. 6-D, C.A.B. No. 82, proposed by Members of the Air Transport Association and Other Participating Carriers.

By tariff revisions [1] bearing a posting date of October 8, and marked to become effective December 21, 1976, members of the Air Transport Association (ATA) and other participating carriers propose, inter alia, the following revisions to the restricted articles tariff governing carriage of hazardous materials:

1. Revision of the required shipper's certificates forms for radioactive and nonradioactive restricted articles shipments. Both the old and the new shipper's certifications rules provide for separate forms for radioactive and nonradioactive materials. The proposed certification for nonradioactive shipments include: declaration (required by DOT) that the shipment conforms with DOT regulations, and (for international shipments) IATA regulations; designation of the shipment as suitable either for passenger and all-cargo aircraft or all-cargo aircraft only; headings for number of packages of each commodity, name of each commodity, class, packaging note, net quantity per package, and flash point; and space for special handling instructions.

[1] Revisions to Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 82.

The certification for radioactive articles contains, in addition to most of those required for nonradioactive shipments, the following items: declaration that the shipment is intended for use in, or incident to, research, or medical diagnosis or treatment (applicable only to shipments moving by passenger aircraft); name of principal radioactive element; specific radioactivity (in curies or millicuries); transport index; and, in the case of fissile materials, other certificates attached to shipment.[2]

2. Addition of provisions for gallium metal (pursuant to amendments to 49 CFR 172.101, 173.861, and 173.862, issued by DOT August 30, and effective September 4, 1976), which: classify this commodity as ORA.C (Other Regulated Article, Group C); prohibit transportation of liquid gallium; and add certain other limitations on acceptance of solid gallium metal.

A complaint requesting rejection or, alternatively, suspension and investigation of the proposal has been submited by the Council for Safe Transportation of Hazardous Articles (COSTHA). The complaint alleges inter alia, that (1) ATA's proposed designation of gallium metal as "ORA.C" conflicts with DOT classification of this commodity as "ORM-B" (Other Regulated Material, Class B), and as such is a "patent nullity" as a matter of law, and should therefore be rejected; (2) ATA's proposed shipper's certifications are inconsistent with documentation used for all other modes of transpotration, and would increase inefficiency through duplication of effort, time and paper; and (3) DOT has exclusive jurisdiction over safety regulation of air transportation, and the Board should thus not permit any deviation from DOT regulations.

COSTHA further objects to ATA's failure to revise the tariff thoroughly to reflect DOT's new hazardous materials regulations, and particularly to ATA's continued use of "ORA" designations instead of DOT's "ORM" classifications.[3]

In support of the proposal, and in answer to the complaint, ATA asserts, inter alia, that the instant filing is part of an ongoing "good faith" effort to bring the tariff into conformity with DOT's new regulations, which become effective for mandatory compliance January 1, 1977; that none of the proposed changes conflict with DOT regulations; that the Board has, therefore, no power to reject such revisions; and that COSTHA has not submitted facts warranting suspension and investigation of the proposal.

ATA further claims that its designation of gallium metal as "ORA.C" is justified since (1) it conforms with current tariff specifications, and (2) DOT's ORM-B classification incorrectly imputes corrosive properties to gallium metal, which is degenerative; that the reclassification to "ORM" will be completed as soon as possible before January 1; and that, due to the special hazards inherent therein, radioactive materials require separate certification to identify them readily.

In view of the foregoing, and all other relevant factors, the Board concludes that the proposed provisions for gallium metal should be rejected. The Board further concludes that the complaint does not set forth facts warranting investigation of the remaining revisions, and the request therefor, and consequently the request for suspension, will be denied.

ATA's gallium metal provisions were originally filed without any justification for the differences between DOT's regulations for gallium metal and the proposed tariff provisions. ATA does attempt to justify the classification of gallium as ORA.C in its answer on the grounds that it conforms with current tariff classifications, and that DOT has misclassified gallium as ORM-B. The latter argument appears false. DOT's class ORM-B is defined as a material "capable of causing significant damage to a transport vehicle or vessel from leakage during transportation * * *" (49 CFR 173.500). Gallium metal, in its liquid form, can cause severe embrittlement of sheet aluminum, and thus comes within the definitions. ATA fails to make any attempt at showing why DOT's classification ORM-B could not have been added to its tariff. Indeed, ATA merely proposes to use its old classification, ORA.C, without producing any economic justification as required by our regulation in section 221.165. Thus the Board believes these provisions to be in violation of the tariff justification requirements of this section. Moreover, the Board notes that there is a question of whether the provisions comply with DOT regulations. DOT's gallium metal regulations were issued for September 4, 1976, effectiveness on an emergency basis, with no provision for voluntary compliance. Thus, under the law, shippers must mark and identify gallium metal shipments as ORM-D material. The proposed tariff revision would also require marking and identification as ORA.C. This may well result in confusion that could vitiate DOT's purposes in issuing the hazardous materials regulations (and that of the carriers in publishing the tariff).

The Board will, however, permit the proposed shipper's certifications to become effective. While DOT does not require any specific format for shipper's certification, it does require such certification to include certain language verbatim. ATA's proposed forms include this language. Although ATA also requires a statement to the effect that international shipments comply with IATA regulations as well as DOT regulations and although DOT does not require separate certification forms for radioactive and non-radioactive shipments as long as the applicable language is included, we do not believe these provisions place an undue burden upon shippers.

The Board will also permit the remainder of the proposed revisions to become effective, since they do not conflict with DOT regulations effective between December 21, 1976, and January 1, 1977. Subsequent to January 1, however, many of the tariff provisions, unless revised, will not be in conformity with DOT regulations. Nevertheless, both carriers and shippers will be subject to the latter regulations.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof.

It is ordered, That:

1. The 30th Revised Page 51, and 17th Revised Page 126–B of Tariff C.A.B. No. 82 issued by Airline Tariff Publishing Company, Agent, are rejected;

2. Except to the extent granted herein, the complaint of the Council for Safe Transportation of Hazardous Articles in Docket 29949 is dismissed; and

3. Copies of this order shall be served upon Airline Tariff Publishing Company, the Air Transport Association of America, and the Council for Safe Transportation of Hazardous Articles.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-37465 Filed 12-20-76;8:45 am]

[Docket 29943, Order 76-12-91]

ALM DUTCH ANTILLEAN AIRLINES

Statement of Tentative Findings and Conclusions and Order To Show Cause Regarding Foreign Air Carrier Permit

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of December 1976.

ALM Dutch Antillean Airlines (ALM) is the holder of a foreign air carrier permit[1] authorizing: (a) foreign air transportation with respect to persons, property, and mail between a point or points in the Netherlands Antilles, the intermediate points Santo Domingo, Dominican Republic, Port-au-Prince, Haiti, Kingston and Montego Bay, Jamaica, and Camaguey and Havana, Cuba, and the terminal point Miami, Florida; and between a point or points in the Nether-

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[2] Specific radioactivity—level of spontaneously emitted ionizing radiation of a substance, measured in curies per gram.
Transport index—the level of radiation penetrating the packaging of a radioactive shipment.
Fissile material—a material capable in sufficient amounts of sustaining a nuclear fission chair reaction. Fissile materials include: plutonium 238, 239, and 241; and uranium 233 and 235.

[3] COSTHA further protests against a proposed revision in "Consumer commodities," DOT classification ORM-D. Since this provision has already been rejected by the Board's staff under delegated authority, thus continuing in effect the currently effective provision, against which COSTHA has not complained, the Board will dismiss COSTHA's complaint against this revision as moot.

[1] Issued pursuant to Order 70-3-144, approved March 26, 1970.

lands Antilles and the terminal point New York, New York; and between a point or points in the Netherlands Antilles and the terminal point San Juan, Puerto Rico; and (b) the performance of charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations.

By application filed on October 19, 1976,[2] ALM requests a show cause order to amend its permit so as to authorize it to engage in foreign air transportation with respect to persons, property, and mail between Port-au-Prince, Haiti, and San Juan, Puerto Rico. ALM requests that this additional authority be granted for a temporary period until such time as a U.S. air carrier inaugurates frequent and regular scheduled services between Port-au-Pdince and San Juan pursuant to authority from the Civil Aeronautics Board.

At the present time no U.S. air carrier serves the Port-au-Prince-San Juan market.[3] In the absence of such service by a U.S. air carrier, the Government of Haiti supports ALM's application. The Government of the Netherlands Antilles also supports ALM's application for Port-au-Prince-San Juan authority,[4] as does the U.S. Department of State.[5]

It appears that ALM possesses the necessary fitness to provide the additional services for which authority is sought. ALM has regularly and successfully provided service between those points for which it presently holds authority from the Board.

On the basis of the record before us, it appears that the temporary amendment of ALM's foreign air carrier permit to include Port-au-Prince, Haiti, as a point beyond San Juan on Route 3 pending inauguration of scheduled service between San Juan and Port-au-Prince by a U.S. air carrier is in the public interest, and that ALM possesses the necessary fitness, willingness, and ability to provide these services and to conform to the provisions and requirements of the Act and the Board's Regulations.[6]

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes:

1. That in view of the absence of air service betwen Port-au-Prince and San Juan, by any U.S. carrier, it is in the public interest to amend the foreign air carrier permit held by ALM Dutch Antillean Airlines to temporarily authorize scheduled foreign air transportation with respect to persons, property, and mail to Port-au-Prince, Haiti, as a point beyond San Juan, Puerto Rico, on Route 3;

2. That the temporary authority to provide service to Port-au-Prince beyond San Juan shall expire upon the date that any U.S. air carrier commences scheduled service between Port-au-Prince and San Juan, and that service to Port-au-Prince under the temporary authority granted herein should *not* be considered to be an activity of a continuing nature as that term is used in 5 U.S.C. 558(c) and will not be automatically extended by the timely filing of a renewal application;

3. That the public interest requires that the exercise of the privileges granted by said permit shall be subject to the terms, conditions, and limitations contained in Order 70-3-144, those contained in the specimen form of permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

4. That ALM Dutch Antillean Airlines is fit, willing, and able properly to perform the above-described foreign air transportation, and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

5. That except to the extent granted, the application of ALM Dutch Antillean Airlines in Docket 29943 should be denied;

6. That an evidentiary hearing is not required in the public interest; and

7. That the amendment of ALM's foreign air carrier permit is not a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Quality Act of 1969.[7]

Accordingly, it is ordered, That: 1. All interested persons be and they hereby are directed to show cause why the Board should not make final the tentative findings and conclusions stated herein, and why an amended foreign air carrier permit in the form of the specimen permit attached to this order should not, subject to the approval of the President pursuant to section 801 of the Act, be issued to ALM Dutch Antillean Airlines;

2. Any interested person having objection to the issuance, without hearing, of an order making final the tentative findings and conclusions stated herein shall file a statement of objections supported by evidence within 21 days after the adoption of this order. If an evidentiary hearing is requested, the objection should state in detail why such hearing is considered necessary and what relevant and material facts would be expected to be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matter and issues raised by the objections before further action is taken by the Board; [8]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. Copies of this order shall be served upon ALM Dutch Antillean Airlines, Pan American World Airways, Inc., Eastern Air Lines, Inc., and the Ambassador of the Kingdom of the Netherlands in Washington, D.C.

This order will be published in the FEDERAL REGISTER and will be transmitted to the President.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER

(AS AMENDED)

ALM Dutch Antillean Airlines is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in the Netherlands Antilles; the intermediate points Santo Domingo, Dominican Republic; Port-au-Prince, Haiti; Kingston and Montego Bay, Jamaica; and Camaguey and Havana, Cuba; and the terminal point Miami, Florida.

2. Between a point or points in the Netherlands Antilles and the terminal point New York, New York.

3. Between a point or points in the Netherlands Antilles; the intermediate point San Juan, Puerto Rico; and the terminal point Port-au-Prince, Haiti.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Netherlands Antilles, a constituent part of the Kingdom of the Netherlands, for international air service of the Kingdom of the Netherlands.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit re-

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[2] A copy of the application has been transmitted to the President of the United States in accordance with the requirements of section 801 of the Act.

[3] Eastern Air Lines, Inc. and Pan American World Airways, Inc. are both certificated to serve Port-au-Prince-San Juan, but neither carrier currently does so. Eastern was authorized to suspend service between these two points until September 8, 1978, by Order 76-9-29 of September 7, 1976. Pan American serves both Port-au-Prince and San Juan in connection with other points on Route 136, but does not currently provide schedule service between these two particular points.

[4] By diplomatic note dated October 8, 1976, from the Embassy of the Kingdom of the Netherlands.

[5] By letter of November 24, 1976, to the Board.

[6] In approving the amendment of ALM's authority to provide service between the Netherlands Antilles and San Juan, Puerto Rico, the Board found that the carrier met the fitness standards of the Act and that the services proposed were in the public interest. Order 70-3-144, approved March 26, 1970. ALM has had no history of formal violations of Board Regulations since the issuance of Order 70-3-144.

[7] Our tentative finding herein is based upon the fact that the amendment of ALM's permit is not likely to result in an increase in operations over those conducted by Eastern Air Lines prior to its September 8, 1976, suspension of service in this market.

[8] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

mains in effect, to which the United States and the Kingdom of the Netherlands shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

By accepting this permit the holder waives any rights it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendment to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third party liability insurance provided and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

The holder shall not commence any service authorized herein, except pursuant to an initial tariff setting forth rates, fares, and charges no lower than the lowest rates, fares or charges that are then in effect for any U.S. carrier engaged in the same foreign air transportation.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on
Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effecive date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes hereby authorized from the routes which may be operated by airlines designated by the Government of the Kingdom of the Netherlands, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of the Kingdom of the Netherlands in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States and the Government of the Kingdom of the Netherlands, effective April 3, 1957, as amended by an exchange of notes effective November 25, 1969: *Provided, however,* That clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention or agreement to which the United States and the Kingdom of the Netherlands are or shall become parties: *Provided further,* that, with respect to service to Port-au-Prince, Haiti on Route 3, the authority granted herein shall expire whenever a United States carrier inaugurates scheduled service between Port-au-Prince and San Juan.[1]

In witness whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the ----------.

Secretary.

Issuance of this permit to the holder approved by the President of the United States on ---------- in Order ----------.

[FR Doc.76-37467 Filed 12-20-76;8:45 am]

[Docket 28918, Order 76-12-89]

THOMAS COOK, OVERSEAS, LTD. (GREAT BRITAIN) d/b/a THOMAS COOK, INC. (U.S.)

Order To Show Cause Regarding Foreign Air Carrier Permit

Adopted by the Civil Aeronatics Board at its office in Washington, D.C. on the 15th day of December, 1976.

By application filed on February 25, 1976, Thomas Cook Overseas, Ltd. (Great Britain) d.b.a. Thomas Cook, Inc. (U.S.) (hereinafter referred to as Cook) requests renewal of its foreign air carrier permit to engage indirectly in the foreign air transportation of persons and their accompanying baggage from any point or points in the United States to any point or points outside the United States, and return. On March 18, 1976, Cook filed a motion for entry of a Board order directing all persons interested in the proceeding to show cause why the Board should not, without hearing, grant the aforesaid application.

No answers to the application and motion have been filed.

Background

Thomas Cook Overseas, Ltd. (Great Britain) is a British corporation, the principal place of business of which is located at 45 Berkeley Street, WIA 1EB, England. Cook does business in the United States through its American subsidiary, Thomas Cook, Inc., a New York corporation, the principal place of business of which is located at 587 Fifth Avenue, New York, New York 10017. Cook is not a direct air carrier. It is neither owned nor controlled by a direct air carrier, nor is it affiliated in any way with a direct air carrier. It operates no aircraft of its own and does not propose to do so. Cook requests the Board to renew its foreign indirect air carrier permit so as to permit it to continue to engage in indirect air transportation through the operation of travel group charters, inclusive tour charters, and one-stop inclusive tour charters in foreign air transportation.

Ownership and Control

Thomas Cook Overseas, Ltd. (Great Britain), incorporated in England in 1947 under the name "Thos. Cook & Son (Continental and Overseas), Limited," functions as a holding company for the Cook subsidiary companies located in various countries outside of the United Kingdom. The United States subsidiary, which will continue to conduct the indirect foreign air transportation for which renewed authority is sought, is Thomas Cook, Inc. (U.S.), incorporated in the State of New York in 1931 under the name of "Thos. Cook & Son, Inc." Thomas Cook, Inc. (U.S.) is wholly owned by Thomas Cook Overseas, Ltd. (Great Britain). Thomas Cook Overseas, Ltd. (Great Britain) is 25 percent owned by Compagnie Internationale des Wagon Lits et du Tourisme, a publicly held Belgium corporation and 75 percent owned by Thos. Cook & Son, Ltd., a British corporation. Thos. Cook & Son, Ltd., is, in turn, entirely owned by a consortium of three private British corporations: The Midland Bank Ltd., Trusts Houses Forte and the Automobile Association of Great Britain.[1] The officers, directors and key management personnel of Thomas Cook Overseas, Ltd. (Great Britain) are predominantly United Kingdom citizens. Thus it is tentatively concluded that Cook is substantially owned and effectively controlled by citizens of the United Kingdom.

Financial and Operational Fitness

After five years of extensive operations pursuant to its existing permit, there has been no instance brought to the attention of the Board of Cook failing to meet all financial obligations. The Board notes that Cook is part of a structure of corporations, subsidiaries, and affiliated companies which have become well known throughout the world for their successful business operations. In adition to its apparently sound financial status, the traveling public is protected from fiscal irresponsibility by Part 372a, 378 and 378a of the Board's Special Regulations providing for surety bond and escrow arrangements. Thus, it is tentatively concluded that all of the fitness requirements of section 402 of the Act are met by the applicant.

Public Interest

On the basis of comity and reciprocity, it is tentatively concluded that it is in the public interest to grant Cook a permit. The United Kingdom Civil Aviation Au-

[1] The amendment authorizing service between Port-au-Prince and San Juan is a temporary authorization and does not refer to an activity of a continuing nature within the meaning of 5 U.S.C. 558(c).

[1] See letter from Thos. Cook & Son, Ltd. to the Board, dated August 21, 1972, incorporated by attachment to Cook's motion for order to show cause filed March 18, 1976.

thority has granted, with dispatch, the only application by a U.S. indirect air carrier for an Air Travel Organizer's license and has no known rule or policy that would bar additional grants if sought. Indeed, on April 28, 1976, the United States and the United Kingdom concluded a Memorandum of Understanding on Passenger Charter Air Services under which each government will, with some exceptions, accept as charterworthy transatlantic charter traffic originating in the territory of the other and organized and operated in accordance with the other's charterworthiness criteria.

On the basis of the foregoing, it is tentatively found and concluded that:

1. Thomas Cook Overseas, Ltd. (Great Britain) d.b.a. Thomas Cook, Inc. (U.S.) is fit, willing, and able properly to perform the indirect foreign air transportation proposed in its Application and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

2. Thomas Cook Overseas, Ltd. (Great Britain) d.b.a. Thomas Cook, Inc. (U.S.) is substantially owned and effectively controlled by citizens of the United Kingdom of Great Britain and Northern Ireland;

3. Since no issues on this application appear to be contested, a hearing on the application is not required in the public interest;

4. It is in the public interest to issue a foreign indirect air carrier permit in the form of the specimen permit attached hereto to Thomas Cook Overseas, Ltd. (Great Britain) d.b.a. Thomas Cook, Inc. (U.S.) authorizing the carrier, for a period of five years, to engage indirectly in foreign air transportation of persons from any point or points in the United States to any point or points outside the United States, and return; and

5. The public interest requires that the exercise of the privileges granted by the said permit should be subject to the terms, conditions, and limitations prescribed therein, the conditions set forth in paragraphs (a) and (b) below, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board:

a. With respect to the operations conducted pursuant to the authority granted herein, the holder shall be subject to the provisions of Parts 372a, 378, and 378a of the Board's Special Regulations, as now or hereafter amended;

b. In using the authority granted herein (1) the name Thomas Cook Overseas, Ltd. (Great Britain) d.b.a. Thomas Cook, Inc. (U.S.) shall appear on all of the holder's advertising, tickets, stationery, and the like; (2) the above name shall always be used in its entirety; and (3) the name Thomas Cook Overseas, Ltd. (Great Britain) shall be displayed at least as prominently as the name Thomas Cook, Inc. (U.S.).

All interested persons will be given 21 days following the adoption of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to direct their objections, if any, to specific issues and to support such objections with detailed analysis. If an evidentiary hearing is requested, the objector should state the issue with respect to which a hearing is requested, and should state in detail why such a hearing is necessary and what relevant and material facts they would expect to establish through such a hearing. Vague, general, or unsupported objections will be entertained.

Accordingly, it is ordered, That:

1. All interested persons be and they hereby are directed to show cause why the Board should not make final the tentative findings and conclusions herein, and why an order should not be issued subject to approval by the President pursuant to Section 801(a) of the Act, issuing an indirect foreign air carrier permit to Thomas Cook Overseas, Ltd. (Great Britain) d/b/a Thomas Cook, Inc. (U.S.), in the form attached hereto;

2. Any interested persons having objections to the issuance of an order making final the tentative findings and conclusions herein, or to the issuance of the proposed indirect foreign air carrier permit, shall, within 21 days after adoption of this order, file with the Board and serve on the persons named in paragraph 5 below, a statement of objections, together with a summary of testimony, statistical data, and such evidence expected to be relied upon to support the statement of objections;

3. If timely and properly supported objections hereto are filed, full consideration will be accorded the matters or issues raised therein before further action is taken by the Board: *Provided however,* That the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing;

4. In the event no objections are filed hereto, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions herein; and

5. This order shall be served upon the Ambassador of the United Kingdom of Great Britain and Ireland and the Departments of State and Transportation.

This order shall be published in the FEDERAL REGISTER and transmitted to the President.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN INDIRECT AIR CARRIER

Thomas Cook Overseas, Ltd. (Great Britain) doing business as Thomas Cook, Inc. (U.S.), is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage indirectly in foreign air transportation of persons from any point or points in the United States to any point or points outside the United States, and return.

This permit shall be suject to all applicable provisions of any treaty, convention, or agreement affecting the right to engage in indirect air transportation of persons now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the United Kingdom shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions, the holder and the Board will consult with respect thereto, and will use their best efforts to agree upon modifications thereof satisfactory to the Board and the holder.

The exercise of the privileges granted hereby shall be subject to the terms, conditions, and limitations set forth in Order _____ dated _____ and to such other reasonable terms, conditions and limitations requried by the public interest as may from time to time be prescribed by the Board.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

This permit shall be effective on _____, and shall terminate five years thereafter: *Provided, however,* That if during said period the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and the United Kingdom are or shall become parties, then and in that event this permit is continued in effect during the period provided in said treaty, convention, or agreement.

In witness whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the _____.

_____,
Secretary.

Issuance of this permit to the holder approved by the President of the United States on _____. In Order _____.

[FR Doc.76-37466 Filed 12-20-76;8:45 am]

COMMISSION ON CIVIL RIGHTS

KANSAS ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kansas Advisory Committee (SAC) of the Commission wil convene at 10:00 a.m. and end at 2:00 p.m. on January 8, 1977, at the Holiday Inn, Regency West Room, 2700 West 18th, Emporia, Kansas 66801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, Old Federal Office Bldg., Room 3103, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting is to continue planning for followup monitoring

activities of Kansas SAC projects and discuss project development for the calendar year 1977.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 13, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37428 Filed 12-20-76;8:45 am]

MINNESOTA ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and end at 9:00 p.m. on January 14, 1977, at the Roady Inn, 1321 E. 78th Street, Bloomington, Minnesota 55420.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to review and analyze material received from agencies and design questions and prepare for March hearing.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 15, 1976.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.76-37429 Filed 12-20-76;8:45 am]

MINNESOTA ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and end of 12:00 noon on January 15, 1977, at the Roadway Inn, 1321 E. 78th Street, Bloomington, Minnesota 55420.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to review format for February Police-Community Mini-conference; plan participation and topics to be covered; report on American Indian followup and action on inactive members.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 15, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37430 Filed 12-20-76;8:45 am]

OKLAHOMA ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oklahoma Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and end at 10:00 p.m. on January 24, 1977, at the Hilton Inn West, Room 101, Interstate 40 at Meridian, Oklahoma City, Oklahoma 73108.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, New Moore Building, Room 231, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting is to prepare for the Oklahoma SAC open meeting of February 10–11, 1977, on State Employment.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 14, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37431 Filed 12-20-76;8:45 am]

PENNSYLVANIA ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Pennsylvania Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and end at 2:00 p.m. on January 26, 1977, at the Federal Building, 600 Arch Street, 10th Floor, Room 10320, Philadelphia, Pennsylvania 19126.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss civil rights issues within that State.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 13, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37432 Filed 12-20-76;8:45 am]

RHODE ISLAND ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Rhode Island Advisory Committee (SAC) of the Commission will convene at 4:00 p.m. and end at 6:00 p.m. on February 22, 1977, at the Central Congregational Church, 296 Angell Street, Providence, Rhode Island.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss project proposal for the coming year.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 14, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37403 Filed 12-20-76;8:45 am]

SOUTH CAROLINA ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina Advisory Committee (SAC) of the Commission will convene at 10:30 am. and end at 3:30 pm. on January 28, 1977, at the Mark I Motel, Private Dining Room, 515 South Main, Marion, South Carolina 29571.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303.

The purpose of this meeting is to make decision on target city of project on Public Facilities. Tour of city, briefing on data of city; outline of additional data required, adoption of schedule for project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 13, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37434 Filed 12-20-76;8:45 am]

TENNESSEE ADVISORY COMMITTEE

Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations

of the U.S. Commission on Civil Rights, that a planning meeting of the Tennessee Advisory Committee (SAC) of the Commission will convene at 1:00 p.m. and end at 5:30 p.m. on January 14, 1977, at the Ramada Inn, 160 Union Avenue, Levee Room, Memphis, Tennessee 38103.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Bldg., Room 362, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303.

The purpose of this meeting is follow-up activity to the Tennessee SAC's open meeting of October 8–9, 1976, and request for Commission Hearing in support of and request of Tennessee SAC.

This meeting will be conducted pursuant to the provisions of the Commission.

Dated at Washington, D.C., December 15, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-37435 Filed 12-20-76;8:45 am]

CIVIL SERVICE COMMISSION

PRIVACY ACT OF 1974

Notice of Adoption of Routine Uses and Proposal for Additional Routine Use of Information in Systems of Records

The Civil Service Commission published in the FEDERAL REGISTER on March 16, 1976, (41 FR 11075), notice of a proposal to establish additional routine uses of information contained in two systems of records. The Commission invited public comment on all of the proposed routine uses.

This notice includes an analysis of comments received, discusses revisions to certain of the previously proposed routine uses, presents the routine uses as revised or adopted or both, and publishes a newly proposed routine use. The full texts of the notices to which these routine use statements pertain were published in the FEDERAL REGISTER on September 24, 1976, (41 FR 42158–42168). The Commission invites comments on routine use statements which are proposed to become effective thirty days after the date of this notice. Comments may be submitted to the Director, Bureau of Manpower Information Systems, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415 and should be received on or before the proposed effective date of the subject routine use.

No comments were submitted about the two proposed routine uses for the system of Pay, Leave, and Travel Records, which contains information only on individuals employed by the Civil Service Commission. Routine use "g", which provides for disclosure of certain information on dues withholding to labor officials, therefore is adopted as proposed and is effective December 21, 1976. Routine use "h", however, has been revised to provide for furnishing information about compensation paid to Federal employees to state and local taxing authorities regardless of whether agreements for withholding of taxes have been negotiated between the authorities and the Secretary of the Treasury. This revision was made after consideration of the views of the Office of Legal Counsel, Department of Justice, to the effect that disclosure of tax information is compatible with the purpose of collecting payroll information even though no withholding agreement exists pursuant to 5 U.S.C. 5516, 5517, or 5520. Routine use "h" will be effective January 21, 1977. However, any person may comment on revised routine use "h" during the next thirty days, and any comments received will be considered in terms of the need for further revision.

Comments were received on each of the three proposed routine uses for the Government-wide system of General Personnel Records. One agency questioned whether routine use "s" was intended to describe disclosure only to an official of the employing agency. Since that was not the intention, the language of that routine use has been changed to clarify that it covers disclosure to an official of another Federal agency. Routine use "s" is effective December 21, 1976.

One comment was received about routine use "u," describing the disclosure of information about incentive awards and other honors. The comment questioned the right of an agency to disclose such information, even though positive in nature, without specific approval by the employee involved. The Commission believes that it is in the interest of both the Government and the public to disclose information about awards and other honors granted to Federal employees. However, this routine use, as with any other routine use, is permissive and does not mandate disclosure. Therefore, an agency can decide to accommodate an employee's specific request that the honor granted to him or her not be announced publicly. Routine use "u" is adopted as proposed and is effective December 21, 1976.

This notice also contains a proposal for an additional routine use to be added to each of the Commission's five Government-wide systems of records. The newly proposed routine use will permit a Federal agency to disclose information to another Federal agency or to a court when the Government is party to a suit before the court. This routine use will be effective January 21, 1977. However, any person may comment on the newly proposed routine use during the next thirty days, and any comments received will be reviewed for indications of a need for revision.

With respect to proposed routine use "t" for the General Personnel Records system concerning disclosure of information from that system to recognized labor organizations, final Commission action on that proposed routine use is completed, published, and effective December 14, 1976.

The adopted and proposed routine uses applicable to the Commission's systems of records are indicated below.

CSC–7, Pay Leave, and Travel Records—CSC.

* * * * *

g. To provide officials of labor organizations recognized under Executive Order 11491, as amended, with information as to the identity of Civil Service Commission employees contributing dues each pay period and the amount of dues withheld from each contributor.

h. To disclose information to state and local tax authorities, except that social security account numbers will not be furnished to State and local governments not satisfying the requirements set forth in section 7(a) (2) (B) of the Privacy Act.

* * * * *

CSC/GOVT–1. Appeals, Grievances, and Complaints Records—CSC

* * * * *

j. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

CSC/GOVT–2. Confidential Employment and Financial Interest Statements—CSC

e. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

* * * * *

CSC/GOVT–3. General Personnel Records—CSC

* * * * *

s. Used to provide an official of another Federal agency any information he or she needs to know in the performance of his or her official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies in support of the personnel functions for which the records were collected and are maintained.

* * * * *

u. Used to select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

v. Disclosed to another Federal agency or to a court when the Government is party to a suit before the court.

CSC/GOVT–4. Personnel Investigations Records—CSC

* * * * *

j. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

CSC/GOVT–5. Recruiting, Examining, and Placement Records—CSC

* * * * *

k. To disclose information to another Federal agency or to a court when the

Government is party to a suit before the court.

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

[FR Doc.76-37337 Filed 12-20-76;8:45 am]

DEPARTMENT OF COMMERCE

Economic Development Administration

FANCY INDUSTRIES, INC.

Eligibility To Apply for Trade Adjustment Assistance, Petition for Determination

A petition under Section 251 of the Trade Act of 1974 (P.L. 93-618), initially submitted on June 15, 1976, and accepted on June 17, 1976, from Fancy Industries, Inc., Building 5, Brooklyn Navy Yard, Brooklyn, New York 11205, was subsequently withdrawn and resubmitted. The amended petition submitted on December 9, 1976, by the producer of handbags and purses, was accepted for filing on December 15, 1976. Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this (Jan. 3, 1977) notice.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.76-37512 Filed 12-21-76;8:45 am]

MRS. DAY'S IDEAL BABY SHOE CO., INC.

Eligibility To Apply for Trade Adjustment Assistance, Petition for Determination

A petition by Mrs. Day's Ideal Baby Shoe Company, Inc., 20 Locust Street, Danvers, Massachusetts 01923, a producer of footwear for infants, was accepted for filing on December 15, 1976, pursuant to Section 251 of the Trade Act of 1974 (P.L. 93-618).

Consequently, the United States Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter, A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.76-37511 Filed 12-21-76;8:45 am]

National Oceanic and Atmospheric Administration

KAHALA HILTON

Issuance of Permit To Take Marine Mammals

On July 12, 1976, notice was published in the FEDERAL REGISTER (41 FR 28565) that an application had been filed with the National Marine Fisheries Servict by Kahala Hilton, 5000 Kahala Avenue, Honolulu, Hawaii 96816, for a permit to take four (4) Atlantic bottlenosed dolphins (*Tursiops truncatus*) for the purpose of public display.

Notice is hereby given that, on December 15, 1976, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit to take two (2) Atlantic bottlenosed dolphins to Kahala Hilton, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Dated: December 15, 1976.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

[FR Doc.76-37418 Filed 12-20-76;8:45 am]

LOUIS SCARPUZZI ENTERPRISES, INC.

Issuance of Permit To Take Marine Mammals

On September 3, 1976, notice was published in the FEDERAL REGISTER (41 FR 37384) that an application had been filed with the National Marine Fisheries Service by Louis Scarpuzzi Enterprises, Inc., 339 Riverside Drive, Fort Myers, Florida 33905, for a permit to take one (1) Atlantic bottlenosed dolphin (*Tursiops truncatus*) for public display.

Notice is hereby given that on December 10, 1976, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit for the above taking to Louis Scarpuzzi Enterprises, Inc., subject to certain conditions set forth herein. The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington D.C.; and
Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

Dated: December 10, 1976.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.76-37419 Filed 12-20-76;8:45 am]

STEVEN L. SWARTZ

Issuance of Marine Mammal Permit

On October 6, 1976, notice was published in the FEDERAL REGISTER (41 FR 44063) that an application had been filed with the National Marine Fisheries Service by Mr. Steven L. Swartz, Field Associate, San Diego Society of Natural History, 1592 Sunset Cliffs, San Diego, California 92107, for a Scientific Research Permit to conduct studies on gray whales (*Eschrichtius robustus*).

Notice is hereby given that on December 14, 1976, the National Marine Fisheries Service issued a Scentfic Research Permit, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), to Steven L. Swartz, subject to certain conditions set forth therein.

The Permit authorizes the Holder to conduct studies on gray whales in the San Ignacio Lagoon, Baja, California, Mexico, by means of the following activities, which may involve harassment of individual cetaceans within the population stocks: (1) observations from towers located near the mouth of the lagoon; (2) observations from motor boats; and (3) observations from shore stations.

The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 14, 1976.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.76-37420 Filed 12-20-76;8:45 am]

ZOOLOGICAL SOCIETY OF BUFFALO

Issuance of Permit to Take Marine Mammals

On October 14, 1976, notice was published in the FEDERAL REGISTER (41 FR 45037), that an application had been filed with the National Marine Fisheries

Service by the Zoological Society of Buffalo, Inc., Buffalo Zoological Gardens, Delaware Park, Buffalo, New York 14214, for a permit to take two (2) California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on December 14, 1976, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a permit for the above taking to Buffalo Zoological Gardens subject to certain conditions set forth therein. The Permit is available for review by interested persons in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 14, 1976.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.76–37417 Filed 12–20–76;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DDR&E HIGH ENERGY LASER REVIEW GROUP (HELRG)

Meeting

Pursuant to the provisions of Section 10 of Appendix I, Title 5, United States Code, notice is hereby given that closed meetings of the DDR&E High Energy Laser Review Group will be held at 0830 on Wednesday, Thursday and Friday, January 26, 27 and 28, 1977 in Albuquerque, New Mexico. The purpose is to review matters pertaining to the Department of Defense high energy laser program.

The entire meeting will be devoted to a discussion of classified information as defined in subparagraph (1) of Section 552(b) of Title 5 of the U.S. Code, and therefore will be closed to the public.

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

DECEMBER 16, 1976.

[FR Doc.76–37383 Filed 12–20–76;8:45 am]

DEFENSE SCIENCE BOARD TASK FORCE ON NET TECHNICAL ASSESSMENT

Meeting

The Defense Science Board Task Force on "Net Technical Assessment" will meet in closed session on January 18–19, 1977 at the Pentagon, Washington, D.C.

The overall mission of this Task Force is to advise the Secretary of Defense and the Director of Defense Research and Engineering on U.S./USSR overall research and engineering technology programs and to provide guidance for U.S. technology exploitation in these areas to the Department of Defense.

The Task Force will examine in detail the important problem of determining critical intelligence technical requirements of the Department of Defense, the ways in which answers to these requirements would influence future U.S. R&D/operational actions, any time urgency associated with the requirements and collection methods for satisfying these requirements.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force 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.

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

DECEMBER 16, 1976.

[FR Doc.76–37384 Filed 12–20–76;8:45 am]

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, NY 10014 on January 12, 1977.

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 A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Groups 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: December 20, 1976.

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

[FR Doc.76–37623 Filed 12–20–76;10:02 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 660–2; PFT20]

CIBA-GEIGY CORP.

Filing Food Additive Petition

Ciba-Geigy Corp. Agricultural Div. PO Box 11422, Greensboro NC 27409, has submitted a petition (FAP 7H5156) to the Environmental Protection Agency which proposes to amend 21 CFR 561 by establishing a food additive regulation permitting the use of the insecticide *O*-(4-bromo-2-chlorophenol) *O*-ethyl *S*-propyl phosphorothioate in a proposed experimental program involving application of the insecticide to growing cotton with a tolerance limitation of 9.0 parts per million (ppm) in soapstock hulls and 3.0 ppm in cottonseed hulls for residues of the insecticide and its metabolites converted to 4-bromo-2-chlorophenol and calculated as *O*-(4-bromo-2-chlorophenyl) *O*-ethyl *S*-propyl phosphorothioate.

Notice of this submission is given pursuant to the provisions of Section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act. Interested persons are invited to submit written comments on the petition referred to in this notice to the Federal Register Section, Technical Services Division (WH–569), Office of Pesticide Programs, East Tower, Rm. 401, Environmental Protection Agency, 401 M St. SW, Washington DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. The comments should be submitted as soon as possible and should bear a notation indicating the petition number "FAP 7H5156". Comments may be made at any time while a petition is pending before the Agency. All written comments will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: December 15, 1976.

JOHN B. RITCH, Jr.
Director, Registration Division.

[FR Doc.76–37350 Filed 12–20–76; 8:45 am]

[FRL 660–3; OPP–30124]

PESTICIDE PROGRAMS

Receipt of Applications To Register Pesticide Products Containing New Active Ingredients

Applications have been submitted to the Environmental Protection Agency (EPA) to register pesticide products containing active ingredients which have not been included in any previously registered pesticide products. Applications were made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751, 7 U.S.C. 136 (a) *et seq*), and the regulations thereunder (40 CFR 162). Notice of receipt of these applications is made in accordance with the provisions of section 3(c)(4) of

FIFRA (40 CFR 162.6(b)(6)) and does not indicate a decision by the Agency on the applications.

Any Federal agency or other interested persons are invited to submit written comments on any applications referred to in this notice to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M St. SW, Washington, DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. The comments must be received on or before January 21, 1977 and should bear a notation indicating the EPA File Symbol number of the application to which the comments pertain. Comments received within the specified time period will be considered before a final decision is made with respect to the pending applications. Comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning any application contained in this notice should be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone at the number provided. Notice of approval or denial of the applications to register pesticide products listed will be announced in the FEDERAL REGISTER. The labels furnished by each applicant as well as all written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8 a.m. to 4:30 p.m. Monday through Friday.

Dated: December 8, 1976.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

EPA File Symbol 100-LAA. Ciba-Geigy, Agricultural Div., Box 11422, Greensboro NC 27409. CYCLE 80W. Active Ingredients: Procyazine [2-[[4-chloro-6-(cyclopropylamino) - s-triazin-2-yl]amino]-2-methylpropionitrile] 80%. Application proposes that this product be classified for general use for weed control in corn. PM24 (202/755-2196)

EPA File Symbol 7182-T. 3M Company, 3M Center Building, 223655E, St. Paul MN 55101. EMBARK 2-S PLANT GROWTH REGULATOR. Active Ingredients: Diethanolamine salt of mefluidide [N-[2,4-dimethyl - 5 - [[(trifluoromethyl)sulfonyl]amino]phenyl]acetamide] 28%. Application proposes that this product be classified for general use on turf, noncrop areas, airports, cemeteries, etc. PM25 (202/426-2632)

EPA File Symbol 20954-T. Zoecon Corp., 975 California Ave., Palo Alto CA 94304. YOUR BRAND INSECT AND MITE HOUSEPLANT MIST. Active Ingredients: Methoprene [isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate 0.100%; hexadecyl cyclopropanecarboxylate 0.075%; resmethrin [(5-benzyl-3-furyl)-methyl 2,2-dimethyl-3-(2 - methylpropenyl)cyclopropanecarboxylate] Min. 70%+) trans. Mox. 30% (+) cis isomers 0.050%; related compounds. 0.007%. Application proposes that this product be classified for general use as a houseplant insecticide. PM17 (202/426-9425)

[FR Doc.76-37351 Filed 12-20-76;8:45 am]

(FRL 660-4); OPP—33000/485

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 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, 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, & 13—202/755-9315
PM 21 & 22—202/426-2454
PM 24—202/755-2196
PM 31—202/426-2635
PM 33—202/755-9041
PM 15, 16 & 17—202/426-9425
PM 23—202/755-1397
PM 25—202/426-2632
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before February 22, 1977. 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 January 21, 1977.

Dated: December 9, 1976.

JOHN B. RITCH, Jr.,
Director, Registration Division.

APPLICATIONS RECEIVED (OPP—33000/485)

EPA Reg. No. 1016-43. Union Carbide Corp., Agricultural Products, PO Box 1906, Salinas CA 93901. SEVIN SPRAYABLE CARBARYL INSECTICIDE. Active Ingredients: Carbaryl (1-naphthyl methylcarbamate) 80%. Method of Support: Application proceeds under 2(a) of interim policy. PM12

EPA File Symbol 1459-LO. Bullen Chemical Co., Hook Rd., Folcroft PA 19032. BULLEN FORTIFIED PINE ODOR DISINFECTANT. Active Ingredients: Pine oil 12.0%; o-Benzyl-p-chlorophenol 3.5%; Isopropyl alcohol 10.0%; Soap 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA Reg. No. 1629-1. The Weevil-Cide Co., A Subsidiary of Research Products Co., 411 N. 7th St., PO Box 1057, Salina KS 67401. WEEVIL-CIDE. Active Ingredients: Carbon Tetrachloride 81.54%; Carbon Disulfide 16.16%; Sulfur Dioxide 1.54%. Method of Support: Application proceeds under 2(a) of interim policy. PM11

EPA File Symbol 1776–0. Hexol, Inc., 1500 17th St., San Francisco CA 94107. PINE KLEEN. Active Ingredients: Pine oil 30.0%; Isopropyl alcohol 12.0%; Soap 10.8%; 4&6-chloro-2-phenylphenol 0.1%. Method of Support: Application proceeds under 2(a) of interim policy. PM32

EPA Reg. No. 1839–46. Onyx Chemical Co., Div. of Millmaster Onyx Corp., 190 Warren St., Jersey City NJ 07302. BTC 2125M. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 25%; n-Alkyl (68% C12, 32% C14 dimethyl ethylbenzyl ammonium chlorides 25%. Method of Support: Application proceeds under 2(a) of interim policy. PM31

EPA Reg. No. 2155–71. I. Schneid, Inc., PO Box 93188, Martech Station, Atlanta GA 30318. LEMONENE DISINFECTANT—CLEANER—SANITIZER FUNGICIDE—DEODORANT. Active Ingredients: Isopropyl Alcohol 5.45%; Essential Oils 5.12%; Soap 4.68%; Sodium salt of o-phenyl phenol 2.16%; Sodium salt of orthobenzlepara chlorophenol 1.65%; Sodium salt of para-tertiaryamyl phenol 1.09%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amendment. PM32

EPA Reg. No. 2290–37. The Terre Co., One Samspin St., Saddlebrook NJ 07662. DURSBAN GRANULES. Active Ingredients: Chlorpyrifos (O,O-diethyl O-(3.5.6-trichloro-2-pyridyl)phosphorothioate] 0.46%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA File Symbol 2437–ER. Elkhorn Chemical Co., Inc., 1 Elk Ln., Elkhorn WI 53121. ELKO HEAVY DUTY DISINFECTANT CLEANER. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 0.8%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.8%; Sodium Metasilicate 2.4%; Tetrasodium ethylenediamine tetraacetate 1.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA Reg. No. 2724–178. Thuron Industries, Inc., 12200 Denton Dr., Dallas TX 75234. STARBAR INSECT STRIP. Active Ingredients: 2,2-Dichlorovinyl dimethyl phosphate 18.6%; Related compounds 1.4%. Method of Support: Application proceeds under 2(a) of interim policy. PM13

EPA Reg. No. 2829–89. Ventron Corp., Congress St., Beverly MA 01915. DUROTEX 7599. Active Ingredients: 10, 10'-oxybisphenoxarsine 2.0% (Total arsenic as elemental As—0.60%) (Water soluble arsenic as elemental As—Less than 0.02%). Method of Support: Application proceeds under 2(b) of interim policy. PM22.

EPA Reg. No. 2829–91. Ventron Corp. DUROTEX 7604. Active Ingredients: 10, 10'-oxybis-phenovarsin 2.0% (Total arsenic as elemental As—0.60%) (Water soluble arsenic as elemental As—Less than 0.02%). Method of Support: Application proceeds under 2 (b) of interim policy. PM22

EPA Reg. No. 2900–0. Shepard Chemical Works, Inc., PO Box 473, Wilmington NC 28401. SHEPARD'S ROACH KILLER. Active Ingredients: Boric Acid 80.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 2935–353. Wilbur-Ellis Co., PO Box 1286, Fresno CA 93715. RED-TOP CONTACT WEED KILLER. Active Ingredients: Dinoseb (2-sec-butyl-4,6-dinitrophenol) 30%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Add uses. PM23

EPA Reg. No. 3125–121. Chemagro Agricultural Div., Mobay Chemical Corp., Box 4913, Kansas City MO 64120. BAYGON 2% BAIT INSECTICIDE. Active Ingredients: o-Isopropoxyphenyl ' methylcarbamate 2%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amendment. PM12

EPA Reg. No. 3125–210. Chemagro Agricultural Div. DYLOX 4 INSECTICIDE. Active Ingredients: Dimethyl (2,2,2-tricholoro-1-hydroxyethyl) phosphonate 39%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Revised directions. PM16

EPA Reg. No. 3125–234. Chemagro Agricultural Div. MESUROL 2% BAIT. Active Ingredients: 4-(Methylthio)-3,5-xylyl methylcarbamate 2%. Method of Support: Application proceeds under 2(a) of interim policy. PM12

EPA Reg. No. 3125–234. Chemagro Agricultural Div. MESUROL 2% BAIT MOLLUSCICIDE. Active Ingredients: 3,5-Dimethyl-4-(methylthio)phenol methylcarbamate 2%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPA Reg. No. 3125–278. Chemagro Agricultural Div. DYLOX 1.5 OIL INSECTICIDE. Active Ingredients: Dimethyl (2,2,2-trichloro-hydroxyethyl) phosphonate 18.5%; Refined petroleum distillates 76.2%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added insect claims. PM16

EPA File Symbol 3125–GNA. Chemagro Agricultural Div. BAYGON MOS INSECTICIDE. Active Ingredients: 2-(1-Methylethoxy) phenol methylcarbamate 12.8%; Xylene 33.0%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Amendment. PM12

EPA Reg. No. 3487–15. Bacon Products Co., Inc., PO Box 8127, Chattanooga, TN 37421. FLIPO SPECIAL FLEA POWDER. Active Indgredients: Malathion (0,0-Dimethyl Dithiophosphate of Diethey1 Mercaptosuccinate) 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 4313–AR. Carroll Co., 2900 W. Kingsley Rd., Garland TX 75041. PINE OIL DISINFECTANT. Active Ingredients: Pine Oil 60.0%; Soap 9.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA Reg. No. 5481–121. Amvac Chemical Corp., 4100 E. Washington Blvd., Los Angeles CA 90023. DURHAM DURSBAN GRANULES 1. Active Ingredients: Chlorpyrifos [O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) Phosphorothioate] 1.0%. Method of Support: Application proceeds under 2 (c) of interim policy. PM12

EPA File Symbol 5905–UUR. Helena Chemical Co., Clark Tower, 5100 Poplar Ave., Suite 29, Memphis TN 38137. HELENA OMNIDIAZINON. Active Ingredients: Petroleum Oil 92.50%; O,O-diethyl O-(2-isopropyl-6-methyl-4-Pyrimidinyl) phosphorotrioate 5.27%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM15.

EPA Reg. No. 6659–5. Knight Oil Corp., 251 N. Comrie Ave., Johnstown NY 12095. BACT–X. Active Ingredients: n-Alkyl (60% C14 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 2.25%; Sodium Carbonate 3.00%; Essential Oils 0.20%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM31.

EPA Reg. No. 6720–206. Southern Mill Creek Products Co., PO Box 1096, Tampa FL 33601. DURSBAN 4E. Active Ingredients: Chlorpyrifos (O,O-diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate 40.8%; Aromatic petroleum derivative solvent 47.9%. Method of Support: Application proceeds under 2(b) of interim policy. PM12.

EPA Reg. No. 6754–37. Bettelbach Pesticide Corp., 4111 Peachtree Rd., NE, Atlanta GA 30319. PROFESSIONAL ORKINBAN 2E. Active Ingredients: Chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate] 22.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM12

EPO File Symbol 7404–RR. NuLife Fertilizers, PO Box 883, Tacoma WA 98421. NULIFE WEED & FEED WITH TRIMEC. Active Ingredients: 2,4-Dichlorophenoxyacetic acid 0.36%; 2-(2-Methyl-4-chlorophenoyl) propionic acid 0.15%; Dicamba (3,6-Dichloro-o-anisic acid) 0.03%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA Reg. No. 7764–14. Heritage House Products Corp., 300 Lake Rd., Medina OH 44256. HERITAGE HOUSE DACAMINE BROADLEAF WEED KILLER. Active Ingredients: N- Oleyl 1,3-propylenediamine salt of 2,4-Dichlorophenoxyacetic acid 33.9%. Method of Support: Application proceeds under 2 (b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 8591–17. The Mogul Corp., PO Box 200, Chagrin Falls OH 44022. MOGUL AG–452. Active Ingredients: 2,2-Dibromo-3 nitrilopropionamide 20%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Additional use. PM34

EPA Reg. No. 8730–4. Herculite Protective Fabrics Corp., A Subsidiary of Health-Chem. Corp., 1107 Broadway, New York NY 10010. INSECTAPE. Active Ingredients: 2-(1-Methylethoxy) phenol methylcarbamate 10.0%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amendment. PM12

EPA Reg. No. 8730–5. Herculite Protective Fabrics Corp. INSECTAPE ROACH KILLER. Active Ingredients: 2-(1-Methylethoxy) phenol methylcarbamate 10.0%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amendment. PM12

EPA File Symbol 8959–EG. Applied Biochemists, Inc., PO Box 25, Mequon WS 53092. STOCKTRINE II. Active Ingredients: copper as elemental 0.53%. Method of Support: Application proceeds under 2(b) of interim policy. PM24

EPA Reg. No. 9852–45. Rite-Off Corp., 163 Dupont St., Plainview NY 11803. RITE-OFF ROACH & ANT KILLER. Active Ingredients: 0,0-Diethyl 0-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate 0.500%; Pyrethrins 0.052%; Piperonyl Butoxide, Technical 0.261%; Petroleum Distillate 95.608%. Method of Support: Application proceeds under 2(c) of interim policy. Republished: Revised offer to pay statement submitted. PM15

Corrections

EPA Reg. No. 538–117. O.M. Scott & Sons, Marysville OH 43040. SUPER TURF BUILDER PLUS HALTS CRABGRASS PREVENTER PLUS LAWN FERTILIZER. PM25 (Originally published with incorrect reg. no.) 41 FR 51063 11/19/76.

EPA Reg. No. 3125–146. Chemagro Corp., PO Box 4913, Kansas City MO 64120. BAYGON 70% WETTABLE POWDER INSECTICIDE. PM12 (Originally published with incorrect reg. no. and without PM) 41 FR 51062 11/19/76.

EPA File Symbol 8730–RR. Herculite Protective Fabrics Corporation, 1107 Broadway, New York NY 10010. HERCON INSECTAPE ROACH KILLER. PM12 (Originally published with incorrect product name) 41 FR 51062 11/19/76.

[FR Doc.76–37352 Filed 12–20–76;8:45 am]

(FRL 660-5); [OPP-33000/486]

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 applications for pesticide registration listed below. In some 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, 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 whcih utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or reference 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 Sectino 3(a)(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 & 13—202/755-9315.
PM 21 & 22—202/426-2454.
PM 24—202/755-2196.
PM 31—202/426-2635.
PM 33—202/755-9041.
PM 15, 16 & 17—202/426-9425.
PM 23—202/755-1397.
PM 25—202/426-2632.
PM 32—202/426-9486.
PM 34—202/426-9490.

The Interim Policy Statement requires that claims for compensation be filed on or before February 22, 1977. 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 January 21, 1977.

Dated: December 8, 1976.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED (OPP—33000/486)

EPA Reg. No. 239-2262. Chevron Chemical Co., Ortho Div., 940 Hensley St., Richmond CA 94804. ORTHO ROSE & FLOWER WEED AND FEED GRANULES 8-24-8. Active Ingredients: trifluralin (a,a,a-trifluoro-2,6-dinitro - N,N - dipropyl-p-toluidine) 0.37%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA Reg. No. 264-267. Amchem Products, Inc., Brookside Ave., Ambler PA 19002. ETHREL. Active Ingredients: Ethephon (2-chloroethy) phosphonic acid 21.6%. Method of Support: Application proceeds under 2(a) of interim policy. PM25

EPA Reg. No. 264-267. Amchem Products, Inc. ETHREL PLANT REGULATOR. Active Ingredients: Ethephon (2-chloroethyl) phosphonic acid 21.6%. Method of Support: Application proceeds under 2(b) of interim policy. PM25

EPA Reg. No. 279-1599. FMC Corp., Agricultural Chemical Div., 100 Niagara St., Middleport NY 14105: KOLODUST EXTRA DICHLONE 1 DUST. Active Ingredients: Dichlone 1.0%; Sulfur 71.0%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM21

EPA Reg. No. 279-1624. FMC Corp. PHOSDRIN 2 DUST INSECTICIDE. Active Ingredients: Alpha isomer of 2-carbomethoxyl-1-methylvinyl dimethyl phosphate 1.20%; Related Compounds 0.80%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 352-GIG. E. I. Du Pont De Nemours & Co., Inc., Biochemicals Dept., Wilmington DE. DUPONT FUNGICIDE BLP. Active Ingredients: Methyl 2-benzimidazolecarbamate phosphate 0.7%. Method of Support: Application proceeds under 2(b) of interim policy. PM22

EPA Reg. No. 829-61. Southern Agricultural Insecticides, Inc., Box 218, Palmetto FL 33561. SA BRAND 50 5% MALATHION DUST. Active Ingredients: Malathion (0,0-dimethyl dithiophosphate of diethyl mercaptosuccinate) 5.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 1029-88. Aidex Corp., PO Box 7848, Omaha NB 68107. MALEX DUST. Active Ingredients: Malathion 4.00%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA File Symbol 1304-AL. Furst-McNess Company, Freeport IL 61032. MCNESS FORTIFIED PINE ODOR DISINFECTANT. Active Ingredients: Pine Oil 12.0%; O-Benzyl-p-Chlorophenol 3.5%; Isopropyl Alcohol 10.0%; Soap 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM32

EPA Reg. No. 1386-83. Universal Cooperatives, Inc., 111 Glamorgan St., Alliance OH 44601. UNICO MALATHION WETTABLE POWDER. Active Ingredients: Malathion 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 2491-320. Koos, Inc., 4500 13th Ct., Kenosha WI 53140. HWI LAWN FERTILIZER WITH CRABGRASS CONTROL 12-2-4. Active Ingredients: N-butyl-N-ethyl-*a,a,a*-trifluoro-2,6 dinitro-p-toluidine 0.43%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM25

EPA Reg. No. 4887-110. Stephenson Chemical Co., Inc., PO Box 87188, College Park GA 30337. PREMIUM GRADE 25% MALATHION WETTABLE POWDER. Active Ingredients: Malathion 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg No. 4887-11. Stephenson Chemical Co., Inc. 25% MALATHION WETTABLE POWDER. Active Ingredients: Malathion 25%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg No. 6830-29. Octagon Process, Inc., 596 River Rd., Edgewater NJ 07020. INSECTICIDE, MALATHION-POWDER DUSTING. Active Ingredients: Malathion (O,O-dimethyl phosphorodithioate of diethyl mercaptosuccinate) 1%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM16

EPA Reg. No. 8660-7. Sta-Green Plant Food Co., PO Box 540, Sylacauga, AL 35150. STA-GREEN WEED & FEED FOR BAHIA, BERMUDA, CENTIPEDE, FESCUE, AND ST. AUGUSTINE GRASSES. Active Ingredients: Dimethylamine Salt of 2,4-dichlorophenoxyacetic acid 0.159%; Dimethylamine Salt of 2-(2-methyl-4-chlorophenoxyl) propionic acid 0.508%; Dimethylamine Salt of Dicamba (3,6-dichloro-o-anisic acid) 0.062%. Method of Support: Application proceeds under 2(b) of interim policy. Application for reregistration. PM23

EPA File Symbol 11613-RL. Southeastern Sanitary Supply, Montgomery AL 36102. SESSCO SUPER LEMON DISINFECTANT. Active Ingredients: Alkyl (C14 58%, C16 28%, C12 14%) dimethyl benzyl ammonium chloride 4.0%; Isopropanol 2.0%; Essential oils 0.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31

[FR Doc.76-37353 Filed 12-20-76;8:45 am]

[FRL 660-1; Region IX]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of California for Del Norte, Humboldt, Mendocino, Northern Sonoma and Trinity County Air Pollution Control Districts

On December 23, 1971 (36 FR 24876), March 8, 1974 (30 FR 9308), August 6, 1975 (40 FR 33152), September 23, 1975 (40 FR 43850), January 15, 1976 (41 FR 2231, 2332), January 26, 1976 (41 FR 3825), and May 4, 1976 (41 FR 18498) pursuant to Section 111 of the Clean Air Act, as amended, the Administrator promulgated regulations in 40 CFR Part 60 establishing standards of performance for 24 categories of new stationary sources (NSPS). In addition, on April 6, 1973 (38 FR 8820) and October 14, 1975 (40 FR 48292) pursuant to Section 112 of the Clean Air Act, as amended, the Administrator promulgated in 40 CFR Part 61 national emission standards for three hazardous air pollutants (NESHAPS). These regulations have been amended in certain instances. Sections 111(c) and 112(d) require the Administrator to delegate authority to implement and enforce the standards to any State which submits an adequate procedure. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to a State.

On August 19, 1973, the Regional Administrator, Region IX forwarded to the States in his Region information setting forth the requirements for an adequate procedure for implementing and enforcing the NSPS and NESHAPS. On March 27, June 12 and July 10, 1975, Mr. William Simmons, then executive officer of the California Air Resources Board, requested delegation of authority to implement and enforce the NSPS and NESHAPS on behalf of Humboldt-Del Norte, Trinity and Northern Sonoma County Air Pollution Control Districts, respectively. On December 11, 1975, Mr. William H. Lewis, Jr., Executive Officer of the California Air Resources Board, requested delegation of authority to implement and enforce the NSPS and NESHAPS on behalf of Mendocino County Air Pollution Control District. After thorough reviews of the requests for delegation, the Administrator delegated authority to Humboldt-Del Norte, Trinity, Northern Sonoma and Mendocino County Air Pollution Control Districts on July 10, August 18, 1975, February 2, and March 29, 1976, respectively. The public was notified of these delegations on September 11, 1975 (40 FR 42237), October 1, 1975 (40 FR 45277), May 26, 1976 (41 FR 21516) and July 8, 1976 (41 FR 28006), respectively. Then on October 6, 1976, Mr. Lewis requested delegation of authority on behalf of these districts for additional categories, revisions, and amendments to the NSPS and NESHAPS which occurred after the original requests for delegation.

After a thorough review of the request for delegation, the Regional Administrator has determined that for the source categories set forth in paragraphs (A), (B) and (C) of the following official letter to Mr. Lewis, Executive Officer of the California Air Resources Board, delegation is appropriate subject to the conditions set forth in paragraphs (1) through (2) of that letter dated November 9, 1976.

In Reply: E-4-3.
Refer to: ENF 3-5-3.
WILLIAM H. LEWIS, Jr.,
Executive Officer,
California Air Resources Board,
1709-11th Street,
Sacramento Calif. 95814.

DEAR MR. LEWIS: This is in response to your letter of October 6, 1976, requesting delegation of the authority on behalf of the Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County Air Pollution Control Districts to implement and enforce Standards of Performance for New Stationary Sources (NSPS) for the following categories of sources:

PHOSPHATE FERTILIZER INDUSTRY

STEEL PLANTS—ELECTRIC ARC FURNACES

In addition you requested delegation of authority to implement and enforce revisions to 40 CFR Part 60 for continuous monitoring requirements (40 FR 46250, October 6, 1975), for modification, notification, and reconstruction (40 FR 58416, December 16, 1975) and the amendments to 40 CFR 61, the National Emission Standards for Hazardous Air Pollutants (NESHAPS) contained in 40 FR 48292, October 14, 1975.

We have reviewed the pertinent laws of the State of California and the rules and regulations of the Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County Air Pollution Control Districts, and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS and NESHAPS by the Air Pollution Control Districts (APCDs) and the State of California. Therefore, we hereby delegate our authority, pursuant to §§ 111(c) and 112(d)(1) of the Clean Air Act, as amended, for implementation and enforcement of the NSPS and NESHAPS to the State of California on behalf of the Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County APCDs as follows:

A. Authortiy for all sources located in the Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County APCDs subject to the standards of performance for new stationary sources in the following six categories:

Phosphate Fertilizer Industry:
Wet Process Phosphoric Acid Plants
Superphosphoric Acid Plants
Diammonium Phosphate Plants
Triple Superphosphate Plants
Granular Triple Superphosphate Storage Facilities
Steel Plants: Electric Arc Furnaces

B. Authority for all requirements of 40 CFR Part 60 for continuous monitoring, and 40 CFR Part 60 for modification, notification, and reconstruction.

C. Authority for all sources located in Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County APCDs and subject to the national emission standards for three hazardous air pollutants promulgated in 40 CFR Part 61 up to and including the amendments of October 14, 1975 (40 FR 48292).

The hazardous air pollutants covered by the delegation are asbestos; berryllium; and mercury.

This delgation is based upon the following conditions:

1. All conditions contained in the letters of delegation for:

a. Humboldt and Del Norte County APCDs, dated July 10, 1975.

b. Mendocino County APCD, dated March 29, 1976.

c. Northern Sonoma County APCD, dated February 2, 1976.

d. Trinity County APCD, dated August 18, 1975.

2. Condition 10 of 1a. and 1d. above is hereby modified for Humboldt, Del Norte and Trinity County APCDs as follows:

10. As of the date of this delegation, sources subject to the NSPS and NESHAPS located within the Humboldt, Del Norte, and Trinity County APCDs are required to submit all reports pursuant to the NSPS and NESHAPS to the appropriate Air Pollution Control District and to EPA, Region IX.

A notice announcing this delegation will be published in the FEDERAL REGISTER. All reports required in 40 CFR Part 60 and 61 will be required to be sent to the Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County APCDs, as well as to EPA, Region IX.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives written notice of any objections within 10 days of receipt of this letter, the State and Districts will be deemed to have accepted all of the terms of this delegation.

Sincerely,

PAUL DE FALCO, Jr.
Regional Administrator

Del Norte APCD
Humboldt APCD
Mendocino APCD
Northern Sonoma APCD
Trinity APCD

Therefore, pursuant to authority delegated to him by the Administrator, the Regional Administrator notified Mr. Lewis on November 9, 1976 that authority to implement and enforce the NSPS/NESHAPS was delegated to the State of California on behalf of the Del Norte, Humboldt, Mendocino, Northern Sonoma, and Trinity County and Air Pollution Control Districts.

Copies of the request for delegation of authority and the Regional Administrator's letter of delegation are available for public inspection at the following addresses:

California Air Resources Board, 1709-11th Street, Sacramento CA 95814.
Environmental Protection Agency, Region IX, Enforcement Division, 100 California Street, San Francisco, CA 94111.

Dated: December 8, 1976.

PAUL DE FALCO, Jr.,
Regional Administrator,
EPA, Region IX.

[FR Doc.76-37349 Filed 12-20-76;8:45 am]

[FRL 661-2; OPP-00039]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel will be held from 9:30 a.m. to 4:30 p.m.

daily on Thursday, January 6, 1977, and Friday, January 7, 1977. The meeting will be held in Room 1112 A, Crystal Mall, Building Number 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The Scientific Advisory Panel is authorized in accordance with section 25(d) of FIFRA as amended [86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.]. In accordance with Section 25(d), the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under Sections 6(b) and 25(a) prior to implementation. The purpose of the meeting is to discuss the following topics:

1. Organizational activities of the Panel.
2. Recommendation of the Office of Special Pesticide Review, Office of Pesticide Programs, with respect to intent to cancel registrations of Kepone products under Section 6(a)(1) of FIFRA.
3. Review of an Amendment to the Regulations and Procedures which relate to Section 19(a) of FIFRA.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (WH-567), Room E315, Environmental Protection Agency, 401 M Street S.W., Washington D.C. 20460 (telephone: 202/755-4851). Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit four copies of a summary no later than January 4, 1977. Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

Dated: December 16, 1976.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.76-37483 Filed 12-20-76;8:45 am]

[FRL 661-5]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to the State of Ohio

Pursuant to Section 111 of the Clean Air Act, as amended, the Administrator of the U.S. Environmental Protection Agency (EPA) promulgated regulations establishing standards of performance for twenty-four categories of new stationary sources (NSPS). Section 111(c) directs the Administrator to delegate his authority to implement and enforce NSPS to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

On July 23, 1973, the Regional Administrator, Region V, EPA forwarded to the State of Ohio information setting forth the requirements for an adequate procedure for implementing and enforcing the standards for NSPS. After preliminary negotiation, on June 3, 1976, the Governor of Ohio submitted a request to the EPA, Region V office for delegation of authority to the State of Ohio. Included in the request was a description of the procedures to be utilized by the State in exercising the delegated authority. Also included were copies of the State law and regulations which provide the State with the requisite authority to implement and enforce the NSPS. Additionally, the Governor has authorized the Director of the Ohio Environmental Protection Agency (OEPA) to act for him on all subsequent issues related to the delegation requests. After a thorough review of that request, the Regional Administrator has determined that delegation is appropriate for the source categories set forth in the following official letter to the Director of the OEPA subject to the terms set forth in conditions 1 through 10 of that letter:

MR. NED WILLIAM,
Director, Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43216.

DEAR MR. WILLIAMS: This office has reviewed your June 3, 1976, request for delegation of authority to the State of Ohio for the implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS). Included in the review were pertinent laws and regulations of the State of Ohio. It has been determined that the State of Ohio has adequate and effective procedures and resources for implementation and enforcement of NSPS. Therefore, subject to the specific conditions and exceptions set forth below, we hereby delegate authority to implement and enforce the NSPS to the State of Ohio as follows:

Authority for all sources located in the State of Ohio subject to the Standards of Performance for New Stationary Sources promulgated in 40 CFR Part 60, Subparts D through Z and Subpart AA as amended (Reference to 40 CFR Part 60 as amended includes the Code of Federal Regulations revised as of July 1, 1975, as amended by 40 FR 33152, August 6, 1975; 40 FR 42028, September 10, 1975; 40 FR 43850, September 23, 1975; 40 FR 46250, October 6, 1975; 40 FR 58416, December 16, 1975; 41 FR 2232, January 15, 1976; 41 FR 2332, January 15, 1976; 41 FR 3826, January 26, 1976; 41 FR 18498, May 4, 1976). The 24 categories of new sources covered by this delegation are fossil fuel-fired steam generator units greater than 250 million BTUs per hour, incinerator units greater than 50 tons per day, portland cement plants, nitric acid plants, sulfuric acid plants, asphalt concrete plants, petroleum refineries, storage vessels for petroleum liquids, secondary brass and bronze ingot production plants, iron and steel plants, secondary lead smelters, sewage treatment plants, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, coal preparation plants, electric arc furnaces, ferroalloy production facilities and the following five processes in the phosphate fertilizer industry: wet process phosphoric acid plants, superphosphoric acid plants, diammonium phosphate plants, triple superphosphate plants and granular triple superphosphate storage facilities.

This delegation is based upon the following conditions:

1. Acceptance of this delegation of the presently promulgated NSPS does not commit the State of Ohio to request or accept delegation of future standards and requirements for other source categories. A new request for delegation will be required for such standards not included in the State's request of June 3, 1976.

2. Upon approval of the Regional Administrator of Region V, the Director of the Ohio Environmental Protection Agency may subdelegate his authority to implement and enforce the NSPS to other air pollution control agencies in the State when such agencies have demonstrated that they have equivalent or more stringent programs in force.

3. This delegation to the State of Ohio does not include the authority to implement and enforce NSPS for sources owned or operated by the United States which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Part 60 as amended.

4. The Federal NSPS regulations 40 CFR Part 60, as amended, do not have provisions for granting a variance or waivers of testing requirements by class, hence this delegation does not convey to the State of Ohio authority to grant a variance from the NSPS regulations or waivers of testing requirements on a class basis.

5. The Ohio Environmental Protection Agency and U.S. Environmental Protection Agency, Region V will develop a system of communication for the purpose of insuring that each office is informed on (a) the current compliance status of subject sources in the State of Ohio (b) the interpretation of applicable regulations and (c) the description of sources and source inventory data.

6. At no time shall the State of Ohio enforce a State regulation less stringent than the Federal NSPS requirements as published in 40 CFR Part 60 as amended. For example, the definition for "new source" in the Ohio EP-30-01 shall not be used for the purposes of determining those sources subject to NSPS.

7. Enforcement of NSPS in the State of Ohio will be the primary responsibility of the State of Ohio. If, after appropriate discussion with the Ohio Environmental Protection Agency, the Regional Administrator determines that a State procedure for implementing and enforcing the NSPS is inadequate, or is not being effectively carried out, this delegation will be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Governor of the State of Ohio.

8. If the State of Ohio determines that a violation of a delegated NSPS exists, the Ohio Environmental Protection Agency shall immediately notify EPA, Region V, of the nature of the violation together with a brief description of State's efforts or strategy to secure compliance. EPA may exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with regard to any violations of the NSPS regulations.

9. At no time shall the Ohio Environmental Protection Agency enforce a reporting, monitoring or any other requirement less stringent than the Federal NSPS requirements. Ohio Environmental Protection Agency will utilize the methods specified in 40 CFR Part 60 as amended by 40 FR 46250 October 6, 1975, in performing source tests pursuant to the regulations.

10. All State permits issued to new sources subject to Federal NSPS shall be conditioned

to require notice of anticipated and actual start-up dates as required in 40 CFR 60.7.

A Notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the Federal NSPS from sources located in the State of Ohio shall be submitted to the Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43216, as well as the EPA Region V Office. However, reports required pursuant to 40 CFR Section 60.7(c) (excess emissions and malfunctions) will be submitted to the State Agency only. Any such reports which have been or may be received by EPA, Region V, will be promptly transmitted to the Ohio Environmental Protection Agency.

Although this delegation is effective immediately, and although there is no requirement that the State notify EPA of its acceptance, we would appreciate written notice of acceptance or objection to the above conditions within 15 days of the date of receipt of this letter. Should no notice be received, we will proceed with public notice of the delegation in the FEDERAL REGISTER.

Sincerely yours,

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified the Director of the Ohio Environmental Protection Agency on August 4, 1976, that authority to implement and enforce the standards of performance for new stationary sources was delegated to the State of Ohio.

Copies of the request for delegation of authority are available for public inspection at the U.S. Environmental Protection Agency, Region V Office, 230 South Dearborn, Chicago, Illinois 60604.

The Ohio Environmental Protection Agency will administer those delegated NSPS functions through its new source review program which incorporates the assistance of five State district offices and nine municipal or county air pollution control agencies which have a state implementation agreement with the State to perform new source reviews. All required reports or notices which must be sent to the State pursuant to this delegation must be mailed to (1) EPA, Region V and (2) the respective district office or municipal/county agency according to the following list. However, reports required pursuant to 40 CFR Section 60.7(c) (excess emissions and malfunctions) should be sent to the respective State district office or municipal/county agency only.

Jurisdiction	*Agency or office name and address*
Medina, Summit and Portage Counties.	Director, Air Pollution Control, 177 South Broadway, Akron, Ohio 44308.
Stark County-----	Director, Air Pollution Control Division, Canton City Health Department, City Hall, 218 Cleveland Avenue SW, Canton, Ohio 44702.
Butler, Clermont Hamilton and Warren Counties.	Superintendent, Division of Air Pollution Control, 2400 Beekman Street, Cincinnati, Ohio 45214.
Cuyahoga County--	Commissioner, Division of Air Pollution Control, Department of Public Health and Welfare, 2735 Broadway Avenue, Cleveland, Ohio 44115.
Lorain County----	Control Officer, Division of Air Pollution Control, 200 West Erie Avenue, 7th Floor, Lorain, Ohio 44052.
Belmont, Carroll, Columbiana, Harrison, Jefferson, Monroe, Counties.	Director, North Ohio Valley Air Authority (NOVAA), 814 Adams Street, Steubenville, Ohio 43952.
Clark, Darke Greene, Miami, Montgomery and Preble Counties.	Supervisor, Regional Air Pollution Control Agency (RAPCA), Montgomery County Health Department, 451 West Third Street, Dayton, Ohio 45402.
Lucas County and the City of Rossford (in Wood County).	Director, Toledo Pollution Control Agency, 26 Main Street, Toledo, Ohio 43605.
Adams, Brown, Lawrence and Scioto Counties.	Engineer-Director, Air Division, Portsmouth City Health Department, 740 Second Street, Portsmouth, Ohio 45662.
Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Knox, Marion, Mercer, Morrow, Ottawa, Paulding, Putman, Richland, Sandusky, Seneca, Van Wert, Williams, Wood (except City of Rossford), and Wyandot Counties.	Ohio Environmenetal Protection Agency, Northwest District Office, 111 West Washington Street, Bowling Green, Ohio 43402.
Ashtabula, Geauga, Lake, Mahoning, Trumbull, and Wayne Counties.	Ohio Environmental Protection Agency, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.
Athens, Coshocton, Gallia, Guernsey, Highland, Hocking, Holmes, Jackson, Meigs, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties.	Ohio Environmental Protection Agency, Southeast District Office, Rt. #3 Box 603, Logan, Ohio 43138.
Champaign, Clinton, Logan Shelby Counties.	Ohio Enviromnental Protection Agency, Southwest District Office, 7 East Fourth Street, Dayton, Ohio 45402.
Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, and Union Counties.	Ohio Environmental Protection Agency, Central District Office, 369 East Broad Street, Columbus, Ohio 43215.

(Sec. 111 of the Clean Air Act, as amended; (42 U.S.C. 1857 c-6))

Dated: December 10, 1976.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

[FR Doc.76-37487 Filed 12-20-76;8:45 am]

FEDERAL MARITIME COMMISSION

CITY OF OAKLAND AND JAPAN LINE, LTD., ET AL.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 10, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

CITY OF OAKLAND
and
JAPAN LINE, LTD.
KAWASAKI KISEN KAISHA, LTD.
MITSUI O.S.K. LINES, LTD.
YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.

Notice of Agreement Filed by:

J. Kerwin Rooney, Port Attorney, Port of Oakland, P.O. Box 2064, 66 Jack London Square, Oakland, California 94604.

Agreement No. T-3040-1, between City of Oakland (City) and Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Yamashita-Shinnihon Steamship Co., Ltd. (the Lines), modifies the basic agreement which provides for the 10-year nonexclusive preferential assignment of certain marine terminal facilities located in the City's Outer Harbor Terminal Area, which the Lines will use primarily for handling containerized traffic. The purpose of this modification is to: (1) redefine the basic premises by reducing the

gross area; (2) change the boundaries of Parcel "D" by increasing the gross area; (3) reduce compensation paid to City for land rental; and (4) make relative changes to the text of the basic agreement.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

Dated: December 16, 1976.

[FR Doc.76-37440 Filed 12-20-76;8:45 am]

FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Revoked

Notice of voluntary revocation is hereby given with respect to Certificates of Financial Responsibility (Oil Pollution) which had been issued by the Federal Maritime Commission, covering the below indicated vessels, pursuant to Part 542 of Title 46 CFR and Section 311(p)(1) of the Federal Water Pollution Control Act, as amended.

Certificate No.	*Owner/operator and vessels*
01014---	Robert Bornhofen Reederei: *Rapid Bridge.*
01194---	A/S Berat: *Pancaribe.*
01272---	Cardenosa Compania Naviera S.A.: *Neptune.*
01306---	Shaw Savill & Albion Co. Ltd.: *Limpsfield.*
01330---	Shell Tankers (United Kingdom) Ltd.: *Donacilla, Megara.*
01459---	Palm Line Ltd.: *Andoni Palm.*
01466---	Common Bros. (Management) Ltd.: *Ria Jean McMurty.*
01595---	Probity Co. Naviera S.A.: *Probity.*
01858---	Transatlantica De Navegacion S.A.: *Calais.*
01869---	Compagnia Maritima Italiana, S.R.L. Genova: *Auriga.*
02151---	Anchor Line Ltd.: *Glenmoor.*
02181---	James L. Bryan: *PO-1202.*
02330---	Oriental Shipping Corp.: *Pinksky, Redsky, Eurymedon, Bluesky, Amvrosios, Euryalus, Eastern Anna, Edelweiss, Eveline, Regent Lilac, First Venture, Ocean Venture, Shinsho, Silver Dolphin, Zenlin Glory, Globtik Saturn, Eastern Honor, Shinkyo.*
02475---	Houston Barge Line, Inc.: *Parker 102-25, Parker 103-25.*
02644---	Alma Shipping Corp.: *Ioannis Carras.*
02864---	Refineria De Petroleos De Escombreras S.A. (Repesa): *Escatron, Montesa, Alcazar, Calatrava.*
02961---	Koke Kisen Kabushiki Kaisha: *Hikawa Maru.*
03004---	Rederi Ab Soya: *Rigoletto.*
03317---	Belgulf Tankers S.A.: *Belgulf Enterprise.*
03332---	Compania Naviera Romano, S.A.: *Verona.*
03357---	Kirno Hill Corp.: *Selene.*
03492---	Sawayama Kisen K.K.: *Hoeisan Maru.*
03501---	Osaka Shosen Mitsui Senpaku K. K.: *Takagisan Maru.*
03514---	Terukuni Kaiun Kaisha, Ltd.: *Izumo Maru.*
03529---	Yamaichi Kisen K.K.: *Sanwo Maru, Sankou Maru.*
03548---	Matsuoka Kisen Kabushiki Kaisha: *Hakonesan Maru.*
03971---	Korea Shipping Corp.: *Ulsan.*
04150---	Jan C. Uiterwyk Co. Inc.: *Susie U, Maria U, Vera U.*
04152---	Seamaster Corp.: *Bertie Michaels.*
04173---	Foss Launch & Tug Co.: *Foss 241, Foss 303.*
04299---	Erie Navigation Co.: *Peerless.*
04751---	Fame Shipping Co., Ltd.: *Aegis Fame.*
04752---	Banner Shipping Co., Ltd.: *Aegis Banner.*
05041---	Transatlantic Bulk Carriers Inc.: *Rhine Ore.*
05044---	Sider Line Compania De Navegacion S.A.: *Splendor.*
05068---	Pyla Shipping Co. Ltd., Nicosia: *Pati.*
05471---	Belcher Oil Co.: *Belcher No. 32, Ceco 2501, Belcher No. 31, Belcher No. 30, Belcher No. 29, Belcher No. 28, Belcher No. 27, Belcher No. 24, Belcher No. 16, Belcher Port Manatee No. 23.*
05499---	Sitia Compania Naviera S.A.: *Costis.*
05567---	Midatlantic Steamship Corp.: *Sounion.*
05578---	Baltic Shipping Co.: *Semyon Kosinov.*
05855---	Lyra Shipping Co. Ltd.: *Galaxy Faith.*
06042---	Luzon Stevedoring Corp.: *L-1910, Lsco Tabangao, Stanford, L-1911.*
06315---	Leyenda Oceanico Navegacion S.A.: *Santa Vassiliki.*
06875---	Universal Enterprise Inc.: *Oriental Charger.*
07176---	Great Fortune Navigation Co. S.A., Hong Kong: *Great Peace.*
07179---	Tulip Shipping Co., Ltd.: *Kyrarini.*
07374---	Ocean Tramping Co., Ltd.: *Nankuo.*
07554---	Rosa Shipping Co., Ltd.: *Kyravthia.*
07561---	Gulf Atlantic Transport Corp.: *UM 93.*
07669---	Marine Leasing Corp.: *MPE 107.*
07775---	Tropica Ultramar S.A.: *Togo.*
07817---	Yick Fung Shipping & Enterprises Co., Ltd.: *Sapphire.*
08369---	Windtides Tankers Inc.: *Windtides.*
08479---	Delta Maritime Enterprises, Inc.: *Corona Delta.*
08496---	Gies Shipping Co. S.A. of Panama: *Maria.*
08498---	Kareas Shipping Co. S.A. of Panama: *Aghios Nikolaos.*
08604---	Redhill Shipping Co. Ltd.: *Pacific Century.*
08617---	Fairmont Enterprises Ltd.: *Stella Prima.*
08625---	United States Metals Refining Co.: *Copper Queen.*
08925---	Seagull Maritime Enterprises Inc.: *Pennsylvania.*
08948---	Veb Deutfracht/Seereederei: *Ferdinand Freiligrath, Georg Weerth.*
08955---	Lonborg Shipping A/S: *Nina Lonborg.*
08974---	Chariot Maritime Co. Ltd.: *Queen of Ampelos.*
09015---	Kingsland Maritime Corp.: *Scol Eminent.*
09018---	Sigurd Herlofson & Co. A/S: *Amax Trader.*
09100---	Bride Shipping Co. Ltd.: *Aegis Storm.*
09102---	Ariel Maritime Ltd.: *Aegis Thunder.*
09137---	Arne Teigens Rederi A/S: *Rytter-vik.*
09206---	Societe Navale Chargeurs Delmas-vieljeux: *Delchim Dauphine.*
09492---	Stephen & Stephen S.A.: *Zaida.*
09850---	Inter Wave Shipping Co. S.A.: *Queen of Cephalonia.*
10115---	Carga Atlantica Navegacion S.A.: *Aegis Diligence.*
10143---	Compagnie Maritime Zairoise: *Joseph Okito, Maurice M Polo.*
10198---	Fair Lady Navigation S.A.: *Subaru Maru.*
10354---	Flipper Shipping Co., Ltd.: *Hippo Sailor.*
10386---	Frendo Alesund A/S: *Frendo Partnership.*
10434---	Chelsea Navigation Co., Inc.: *Chiqui, Thais.*
10569---	Peavey Co.: *CC 207, CC 211.*
10705---	Et Interessentskab Bestaende AF Dampskibsselskabet AF 1912 Aktieselskab, Aktieselskabet Dampskibsselskabet Svendborg OG Dampskibsselskabet AF 1960 Aktieselskab: *Leise Maersk.*
10971---	Luria Brothers & Co., Inc.: *DD 655, Enoree DD 672.*
11286---	Binion Marine Service, Inc.: *Star JD II.*
11384---	Frendo A/S: *Frendo Carib.*
11419---	Schareff Inc.: *Concord I.*
11441---	Government of Barbados: *North Point.*
11573---	Grace Marine Co. S.A.: *Grace Marine.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 76-37441 Filed 12-20-76;8:45 am]

NONCONTAINER CARRIERS DISCUSSION AGREEMENT

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before January 10, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

David C. Jordan, Esquire, Billig, Sher & Jones, P.C., 2033 K Street, N.W., Washington, D.C. 20006.

Agreement No. 10109–2, among the forty-two member lines of said agreement, is an agreement to extend the approval of the basic agreement indefinitely.

By Order of the Federal Maritime Commission.

Dated: December 16, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76–37439 Filed 12–20–76;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. RP77–23, RP73–77 and RP74–42 (PGA77–3) (DCA77–1)]

ALABAMA-TENNESSEE NATURAL GAS CO.

Proposed PGA Rate Adjustment

DECEMBER 14, 1976.

Take notice that on December 6, 1976, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, Nineteenth Revised Sheet No. 3–A. This revised tariff sheet is proposed to become effective as of January 1, 1977.

Alabama-Tennessee states that the sole purpose of such revised tariff sheet is to adjust Alabama-Tennessee's rates pursuant to the PGA provisions of Section 20 of the General Terms and Conditions of its tariff to reflect increased rates to become effective on January 1, 1977, to be charged by its sole supplier, Tennessee Gas Pipeline.

The revised tariff sheet provides for the following rates:

Rate schedule:	*19th revised sheet No. 3–A*
G–1:	
Demand	$1.63
Commodity (cents)	105.60
SG–1: Commodity (cents)	117.51
I–1: Commodity (cents)	110.96

Alabama-Tennessee also requests, pursuant to Section 154.51 of the Commission's Regulations, a waiver of the thirty days notice requirement because it did not receive Tennessee's increased rate filing, upon which Alabama-Tennessee's filing is based, until several days after the filing for increased rates was made by Tennessee Gas Pipeline.

Alabama-Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 27, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–37441 Filed 12–20–76;8:45 am]

[Docket No. CP73–329 (PGA 77–2)]

CHATTANOOGA GAS CO.

Proposed PGA Rate Adjustment

DECEMBER 14, 1976.

Take notice that on December 2, 1976, Chattanooga Gas Company, A Division of Jupiter Industries, Inc., (Chattanooga) tendered for filing proposed changes to Original Volume No. 1 of its FPC Gas Tariff to be effective on December 1, 1976, consisting of the following revised tariff sheets:

Substitute Twentieth Revised Sheet No. 6.

Chattanooga states that the sole purpose of this Revised Tariff Sheet is to adjust Chattanooga's LNG rates pursuant to the PGA provision in Section 5 of the General Terms and Conditions of its FPC Tariff to reflect increased purchased gas costs resulting from PGA rate increases by one of its suppliers, East Tennessee Natural Gas Company, (East Tennessee) in Docket No. RP71–15, Opinion No. 770–A Special PGA Increase and Docket Nos. RP75–114, *et al.*

The proposed change in rates by East Tennessee reflect the effect of Settlement Agreement Rates in Docket Nos. RP75–114, *et al.* East Tennessee's commodity rates also reflect an increase of 21.52¢ per MCF as a result of producer increases made pursuant to FPC Opinion No. 770–A.

This substitute filing is necessary due to the revision of Opinion No. 770 as set forth in Opinion No. 770–A. For this reason, Chattanooga hereby withdraws its Twentieth Revised Tariff Sheet No. 6 filed with the Commission on October 1, 1976. The rates contained in Chattanooga's October 1, 1976 filing were never placed into effect.

Chattanooga requests that its Substitute Twentieth Revised Sheet No. 6 be made effective on December 1, 1976, the proposed eff ctive date of the underlying increase by East Tennessee.

Chattanooga states that copies of the filing have been mailed to all of its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76–37407 Filed 12–20–76;8:45 am]

[Docket No. CP77–74]

COLORADO INTERSTATE GAS CO.

Application

DECEMBER 14, 1976.

Take notice that on November 29, 1976, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP77–74, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authority to construct and operate a meter station for deliveries of natural gas to Natural Gas Pipeline Company of America (NGPL) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes a meter station to be located at a point of interconnection between its pipeline system and the NGPL system in Moore County, Texas. It states that the new delivery point will consist of two 8-inch meter runs with appurtenant piping and metering equipment at a total estimated cost of $44,222. It further states that maximum delivery volumes through the proposed station will be 50,000 Mcf per day (at 14.65 psia) and that these deliveries will be used to supplement deliveries now made to NGPL through the Forgan Sales Meter Station located in Beaver County, Oklahoma. No increase in total peak or annual delivery obligations to NGPL will result, it asserts.

Applicant states that it is obligated under FPC Rate Schedule H–1 to deliver 18,025,000 Mcf per year of natural gas with a minimum heat content of 950 Btu's per cubic foot to NGPL. It indicates that other current obligations require minimum gas Btu content of either 963 Btu's or 950 Btu's per cubic foot. Applicant states that one of its fields, Keyes Field, produces low Btu content gas of about 835 Btu's per cubic foot which must be mixed with appreciable quantities of high Btu gas from other stations or fields, principally with gas from its Mocane-Laverne Field. Mocane-Laverne produces gas containing about 1,045 Btu's per cubic foot, it is asserted. Applicant estimates the volume of Mocane-Laverne gas available for blending purposes will drop 48% through 1979 to 14,200 Mcf as compared to a projected 1979 production level of 15,844 Mcf from Keyes. It also projects that peak day production through 1979 will decline only 13 percent at Keyes but 48 percent at Mocane-Laverne. Applicant indicates that the proposed metering station is not intended for use on a regular basis, rather, it will allow Applicant to supplement deliveries to NGPL when large volumes of high Btu Mocane-Laverne gas are required to offset low Btu Keyes gas.

Applicant also states that NGPL has agreed to accept deliveries at the proposed station; that NGPL has advised it that such deliveries will not affect NGPL's present transmission operations; and that NGPL has advised the Applicant that an application for authority to install the pipeline tap required to effectuate the gas deliveries from the proposed meter station would be sought by NGPL.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1977, 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 hearings will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37410 Filed 12-20-76;8:45 am]

[Docket No. RP75-8 (PGA77-1)]

COMMERCIAL PIPELINE COMPANY, INC.

PGA Filing

DECEMBER 14, 1976.

Take notice that on December 3, 1976 Commercial Pipeline Company, Inc. (Commercial) tendered for filing Revised Substitute 15th Revised Sheets No. 3A reflecting Purchased Gas Adjustments and effective dates as set out below:

Sheet No.: Revised Substitute 15th Revised 3A.
Current adjustments: 0.1082.
Cumulative adjustments: 0.4262.
Effective date: December 1, 1976.

Commercial states that these revisions track precisely similar revisions in the tariff of Cities Service Gas Company, its sole supplier. Commercial requests waiver of notice to the extent required to permit said tariff sheets to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) all such petitions or protest should be filed on or before December 30, 1976. Protests will be considered by the Commission in determining the appropriate action be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.70-37404 Filed 12-20-76;8:45 am]

[Docket No. E-9566]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Request for Confirmation and Approval of Rates

DECEMBER 14, 1976.

Take notice that on August 18, 1976, and December 2, 1976, the Secretary of the Interior (Interior) on behalf of the Bureau of Reclamation (Bureau), filed a request seeking Commission confirmation and approval of rates for the sale of power and energy generated at the Amistad and Falcon Dam Projects to the South Texas Electric Cooperative, Inc., and the Medina Electric Cooperative, Inc.

The electric powerplant of the Falcon Dam Project is operated by the United States Section of the International Boundary and Water Commission (IBWC). The Bureau of Reclamation (Bureau) has been marketing Falcon Dam power and energy to the Central Power and Light Company pursuant to the terms of a contract which expires December 31, 1977.

Although the dam at the Amistad site has been constructed, Interior asserts that the power plant was never built due to the inability to execute a suitable sales contract. Interior maintains that the proposed contract, since it guarantees a repayment within 50 years, would afford the United States the opportunity to construct the Amistad hydroelectric power plant in accordance with the 1944 Water Treaty between the United States and Mexico (59 Stat. 1219) and various acts of Congress.

Under Article 9 of the proposed contract, the contractors would be billed for electric service in annual installments (payable in 12 equal monthly installments) composed of:

1. The amount necessary to amortize the total investment costs of the hydroelectric power facilities at Amistad over a 50-year period.
2. The amount necessary to amortize the remaining investment costs of the hydroelectric power facilities at Falcon.
3. The annual operation, maintenance, replacement, and administrative costs of the IBWC and the Bureau of Reclamation.

Such annual installments will not be dependent upon the power and energy made available for sale in any year.

The following is a breakdown of the costs of both projects:

Falcon: Remaining financial obligation (June 30, 1976)	$7,136,246
Amistad:	
Cost of previous construction	2,887,751
Estimated cost of new power facilities	27,686,000
Amistad total	30,573,751
Annual costs:	
Falcon:	
50-yr amortization at 2½ pct	251,610
O.M. & R	250,000
Subtotal	501,610
Amistad:	
50-yr amortization (previous costs) at 2⅝ pct.	104,175
50-yr amortization (new facilities) at 6¾ pct	1,942,948
O.M. & R	250,000
Subtotal	2,297,323
Total	2,798,933

The estimated average annual generation from both projects is about 244 million kilowatthours. At an estimated annual cost of $2,800,000, this would amount to about 11.5 mills per kilowatthour which will assure repayment of the power facilities over a 50-year period.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protests with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed by January 14, 1977. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37403 Filed 12-20-76;8:45 am]

DORCHESTER GAS PRODUCING CO.

[Docket No. G-4907]

Application for Amendment of Certificate

DECEMBER 14, 1976.

Take notice that on November 9, 1976, Dorchester Gas Producing Company (Applicant), 1122 Southwest Tower, Houston, Texas, 77002, filed in Docket No. G-4907 an application for amendment of certificate of public convenience and necessity pursuant to §§ 157.23-157.27 of the Commission's Regulations under the Natural Gas Act requesting the Commission to amend the certificate of public convenience and necessity issued on June 22, 1955, in Docket No. G-4907, all as more fully set forth in its application on file with the Commission and open to public inspection.

Applicant states that it is now engaged in modernizing and installing new equipment in its gasoline and dehydration plants in which gas produced from wells on its leasehold estates has been processed and the reserved hydrocarbons removed for more than 25 years. When the modernization program is completed the gasoline and dehydration plants will be more efficient in extracting reserved hydrocarbons and less gas will be required for plant fuel.

Applicant also states that by installing additional modern facilities in the gasoline plant it will be able to extract its reserved nitrogen, the extraction of which will then permit Applicant to extract a greater percent of its reserved hydrocarbons, without reducing the heating value of the residue gas delivered to Natural below the contract level of 950 Btu's per cubic foot.

However, because approximately 33% of the Btu's in the gas stream entering the gasoline plant would be removed by Applicant were it to extract its reserved nitrogen and a larger percent of its reserved hydrocarbons, as it would have a right to do under the gas purhase contract of December 1, 1946, Applicant and Natural Gas Pipeline Company of America have agreed to amend their gas purchase contract by limiting the Btu's that Applicant may remove as plant process fuel and remove in extracting its reserved hydrocarbons to 25% of the Btu's in the gas stream entering the gasoline plant.

Applicant requests that the Commission amend its certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, if an amendment by necessary for Applicant to continue selling and delivering gas to Natural under Applicant's FPC Gas Rate Schedule No. 2 as that rate schedule was amended on May 6, 1976, by a supplement filed on June 9, 1976.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before December 27, 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.

Take further notice that, pursuant to the authority contained in the 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 herein, if the Commission on its own review of the matter finds that an abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37405 Filed 12-20-76;8:45 am]

[Docket No. RP76-114]

MIDWESTERN GAS TRANSMISSION CO.

Filing of Substitute Tariff Sheets

DECEMBER 14, 1976.

Take notice that on December 1, 1976, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following tariff sheets to Third Revised Volume No. 1 of its FPC Gas Tariff, to be effective on January 1, 1977:

Seventeenth Revised Sheet No. 5.
Substitute Original Sheet No. 5A.
First Revised Sheet Nos. 39, 44, 49, 53, 56, 83 and 95F.
Third Revised Sheet No. 80.
Substitute Second Revised Sheet No. 85.
Second Revised Sheet No. 87.

Midwestern states that the purpose of these tariff sheets is: (1) to make certain revisions in the rates proposed in Midwestern's June 30, 1976, Section 4 rate filing, which rates were suspended to January 1, 1977, in Docket No. RP76-114, and (2) to make certain minor conforming tariff changes inadvertently overlooked in its June 30, 1976, filing. Midwestern states that such revisions reflect the current cost of purchased gas reflected in Midwestern's PGA filings of October 29, 1976 and November 22, 1976, resulting from changes in the rates of the suppliers of Midwestern's Northern and Southern systems, respectively.

Midwestern states that copies of the filing have been mailed to all affected customers, the regulatory commissions of each state in which any such customer distributes gas, and the parties in Docket No. RP76-114.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 31, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37409 Filed 12-20-76;8:45 am]

[Docket No. CP63-32]

PANHANDLE EASTERN PIPE LINE CO.

Petition To Amend

DECEMBER 14, 1976.

Take notice that on November 24, 1976, Panhandle Eastern Pipe Line Company (Petitioner), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP63-32 a petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act on October 5, 1976 (56 FPC —), in the instant docket so as to authorize a two-year extension of time from May 1, 1977, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is indicated that the Commission's order of October 5, 1976, authorized the extension of the term of the certificate issued in Docket No. CP63-32 for an additional two-year period from May 1, 1975, and increased the maximum expenditure limitations to a total of $6,500,000. Petitioner proposes to extend the time provided for testing and development of the Montezuma-South Alta Field in Vermillion and Park Counties, Indiana, for an additional two-year period from May 1, 1977. Petitioner states that in order to determine whether the Montezuma-South Alta Field is a potentially operational storage field, it is necessary to study data collected during the coming 1976-77 winter season and this cannot be done by May 1, 1977.

It is stated that Petitioner does not, at this time, request authorization for the expenditure of any additional money in connection with the continued testing and development of the Montezuma-South Alta Field.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before

January 4, 1977, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37408 Filed 12-20-76;8:45 am]

[Docket No. RP72-121 (PGA77-1)]

SOUTHWEST GAS CORP.

Proposed PGA Rate Increase

DECEMBER 14, 1976.

Take notice that on November 22, 1976, Southwest Gas Corporation (Southwest) filed in the above docket a proposed PGA rate increase. In its letter of transmittal to the Commission, Southwest states as follows:

Southwest Gas Corporation respectfully requests that the enclosed six (6) copies of Substitute Eighteenth Revised Sheet No. 3A, constituting Original PGA-1, and the schedule, attached hereto, be substituted for Amended Eighteenth Revised Sheet No. 2A and supporting schedule of the filing by letter dated October 14, 1976.

The reason for this filing is to replace Amended Eighteenth Revised Sheet No. 3A to reflect an overall decrease in rates of .058 cents per therm due to the filing by Northwest Pipeline Corporation to reduce the ODL-1 and increase the SGS-1 commodity charges pursuant to FPC Opinion Nos. 770 and 770-A.

This filing is to change the rates of Southwest under its Purchased Gas Adjustment Clause in Section 9 of its General Terms and Conditions contained in its FPC Volume No. 1.

Southwest respectfully requests the Commission to permit the reduction noted herein and to allow the enclosed substitute tariff sheet to become effective on December 1, 1976, concurrently with Northwest Pipeline Corporation's rate change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 30, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37406 Filed 12-20-76;8:45 am]

[Docket No. CP77-75]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

DECEMBER 14, 1976.

Take notice that on November 14, 1976, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77001, filed in Docket No. CP77-75 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 transportation of natural gas on behalf of Fibers Division, Allied Chemical Corporation (Fiber), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Fiber up to 8,000 Mcf [1] of natural gas per day and an estimated average of 6,000 Mcf per day for a period of two years from the date of the first delivery on an interruptible basis. It is stated that said gas will be purchased by Fiber from production in Southeast Black Bayou and Bancker Fields, Cameron and Vermillion Parishes, Louisiana, respectively, will be received at mutually agreeable points on Applicant's system in Cameron and Vermilion Parishes and will be redelivered at existing points of delivery to Commonwealth Natural Gas Corporation for the account of Fiber. Applicant indicates that said gas is for use in Fiber's Hopewell, Virginia plant and that Fiber is an existing customer of Commonwealth Natural Gas Corporation.

It is indicated that pursuant to a gas sales contract between Fiber (Buyer) and Amerada Hess Corporation and Ethyl Development Corporation (Sellers), dated November 12, 1976, Sellers agreed, contingent upon regulatory approvals, to supply up to 3,000 Mcf per day of natural gas from the Bancker Field at a price of $1.60 per Mcf at the point of delivery in the first year of the contract, and $1.70 per Mcf in the second year. It is also indicated that Fiber (Buyer) and McLain J. Forman (dba Forman Exploration Company) (Seller) entered into a contract on November 12, 1976 for the sale of up to 5,000 Mcf of natural gas produced in the Southeast Black Bayou Field at a price of $1.65 and $1.75 per Mcf in the first and second years of the contract, respectively.

Applicant states that it will retain 3.8 percent of the volume received for transportation as make-up for compressor fuel and line loss and that the initial transportation charge will be 22 cents per Mcf (at 14.7 psia). Applicant asserts that the proposed transportation service will have no effect on its ability to deliver to Priority I markets. It contends that the gas purchased by Fiber would otherwise have been sold in intrastate markets.

[1] All volumes at 15.025 psia unless indicated.

It is indicated that Fiber uses natural gas in the process of producing ammonia, carbon dioxide and hydrogen at its Hopewell, Virginia plant. It is further stated that substantial Priority II curtailments would reduce production of these products and have a significant impact on nationwide fertilizer and fiber production. At Fiber's plants in Chesterfield, Virginia, Pottsville, Pennsylvania, Columbia, South Carolina, and Hopewell, Virginia a total of 5,000 employees could be affected by any substantial curtailment, it is asserted. Applicant further claims that Fiber has reduced natural gas consumption at its Hopwell ammonia plant by 30 percent in the past three years.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1977 file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37412 Filed 12-20-76;8:45 am]

FEDERAL RESERVE SYSTEM

CALIFORNIA SAVINGS AND LOAN LEAGUE, ET AL.

Orders Approving Exemption Application

[Docket No. R-0057]

The California Savings and Loan League, on behalf of all California-chartered savings and loan associations, has applied to the Board for an exemption from the disclosure requirements of

the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–2809), as implemented by Regulation C (12 CFR 203). The League's application was filed pursuant to section 306(b) of the Act (12 U.S.C. 2805(b)) and section 203.3(a)(3) and the Supplement to Regulation C (12 CFR 203.3(a)(3)), and is based upon the requirements of the California Administrative Code (Subchapter 20) and the implementing directives of the California Department of Savings and Loan. In its application, the League claims that the applicable State disclosure regulations and directives contain requirements that are substantially similar to those imposed under the Federal Act and that State law contains adequate provisions for the enforcement of the State disclosure requirements.

Notice of the application, affording opportunity for interested persons to submit comments, was published in the FEDERAL REGISTER on October 1, 1976 (41 FR 43470). The time for filing comments has expired, and the Board has considered the application and the comments received in view of the requirements set forth in section 306(b) of the Act and section 203.3(a)(3) and the Supplement of Regulation C.

In acting upon exemption applications under the Home Mortgage Disclosure Act, the Board considers whether State law (including the regulations and directives of State agencies) imposes mortgage and home improvement loan disclosure requirements that, in substance, are similar in purpose and operation to the requirements of the Federal Act. In that regard, the principal concern is whether State law provides depositors, citizens, and public officials

> with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

(Section 302(b) of the Home Mortgage Disclosure Act, 12 U.S.C. 2801(b).) In addition, the Board considers whether State law contains adequate provisions for enforcement of the State disclosure requirements.

On the basis of the record, the Board has determined that the regulations and directives of the California Department of Savings and Loan impose disclosure requirements that are substantially similar to those imposed under the Federal Act and that applicable California law contains adequate provisions for the enforcement of the Department's disclosure requirements. Accordingly, the application is hereby approved, and all California-chartered savings and loan associations that are subject to the Loan Register and Fair Lending regulations and directives of the California Department of Savings and Loan are hereby exempted from the data compilation and disclosure requirements of the Home Mortgage Disclosure Act, as implemented by §§ 203.4 and 203.5 of Regulation C (12 CFR 203.4 and 203.5). This determination is subject to the conditions set forth below and to the provisions of paragraph (e) of the Supplement to Regulation C regarding the Board's right to revoke any exemption if at any time it determines that applicable State law in fact does not impose requirements that are substantially similar to those imposed under the Home Mortgage Disclosure Act or that such law does not contain adequate provisions for enforcement.

The continuation of the exemption granted to each California-chartered savings and loan association by this Order is subject to the fulfillment of the following three conditions: (1) That separate disclosure statements for each such association's last full fiscal year prior to July 1, 1976 and for the month of July 1976, containing information supplied by the California Department of Savings and Loan and information on home improvement loans originated and purchased during the applicable periods, be made publicly available at such association's offices by December 31, 1976; (2) that a disclosure statement for at least the period from August 1 through December 31, 1976, containing information supplied by the Department, be made publicly available at such association's offices by March 31, 1977; and (3) that those and all future disclosure statements issued prior to June 28, 1980 be retained for public inspection for a period of five years from the date that they are initially disclosed.

By order of the Board of Governors, effective December 8, 1976.

ILLINOIS

[Docket No. R–0058]

The State of Illinois, through the Savings and Loan Commissioner, and the Illinois Savings and Loan League have applied to the Board for exemptions from the disclosure requirements of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–2809), as implemented by Regulation C (12 CFR 203). The applications of the Commissioner and the League were filed pursuant to section 306(b) of the Act (12 U.S.C. 2805(b)) and section 203.3(a)(3) and the Supplement to Regulation C (12 CFR 203.3(a)(3)), and are based upon the requirements of the Illinois Financial Institutions Disclosure Act (95 Ill. Rev. Stat. 201–208) and the implementing directives of the Illinois Department of Financial Institutions. In their applications, the Commissioner and the League claim that the State disclosure act and directives contain requirements that are substantially similar to those imposed under the Federal Act and that State law contains adequate provisions for the enforcement of the State disclosure requirements.

Notice of the applications, affording opportunity for interested persons to submit comments, was published in the FEDERAL REGISTER on October 1, 1976 (41 FR 43470). The time for filing comments has expired, and the Board has considered the applications and the comments received in view of the requirements set forth in section 306(b) of the Act and section 203.3(a)(3) and the Supplement of Regulation C.

In accordance with the disclosure forms prescribed by the Director of the Illinois Department of Financial Institutions, the Board interprets section 3 of the Illinois Financial Institutions Disclosure Act (95 Ill. Rev. Stat. 203) as requiring the disclosure by ZIP code area and census tract of the outstanding portfolio of purchased as well as originated mortgage and home improvement loans, without differentiation between purchases and originations. On the basis of that interpretation and the record, the Board has determined that the Illinois Financial Institutions Disclosure Act and implementing directives of the Illinois Department of Financial Institutions impose disclosure requirements that are substantially similar to those imposed under the Federal Act and that applicable Illinois law contains adequate provisions for the enforcement of the State's disclosure requirements.

Accordingly, the applications are hereby approved, and all Illinois-chartered commercial banks, savings banks, and savings and loan associations that are subject to the Illinois Financial Institutions Disclosure Act are hereby exempted from the data compilation and disclosure requirements of the Home Mortgage Disclosure Act, as implemented by §§ 203.4 and 203.5 of Regulation C (12 CFR 203.4 and 203.5). This determination is subject to the conditions set forth below and to the provisions of paragraph (e) of the Supplement to Regulation C regarding the Board's right to revoke any exemption if at any time it determines that applicable State law in fact does not impose requirements that are substantially similar to those imposed under the Home Mortgage Disclosure Act or that such law does not contain adequate provisions for enforcement.

Notwithstanding the exemption granted by this Order, any Illinois-chartered depository institution that is subject to the disclosure requirements of the Home Mortgage Disclosure Act, as implemented by Regulation C, shall not be exempt from such requirements to the extent that it has an "office" in any "standard metropolitan statistical area" located wholly or partially within Illinois that contains an Illinois county having a current population of 100,000 or fewer persons if that institution originates or purchases "mortgage loans" relating to "residential real property" located in any such county (as the relevant terms are defined in Regulation C). Any such loans shall be disclosed as provided in §§ 203.4 and 203.5 of Regulation C.

The continuation of the exemption granted to each Illinois-chartered bank and savings and loan association by this Order is subject to the fulfillment of the following two conditions: (1) That the Board be informed in a timely fashion of

any developments in the litigation styled Glen Ellyn Savings and Loan Association, et al. v. Tsoumas, in the Circuit Court for the Seventh Judicial Circuit of Illinois (Law No. 124–76); and (2) that all disclosure statements issued prior to June 28, 1980 under the Illinois Financial Institutions Disclosure Act be retained for public inspection for a period of five years from the date that they are initially disclosed.

By order of the Board of Governors, effective December 8, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

MASSACHUSETTS

[Docket No. R–0052]

The Commonwealth of Massachusetts, through the Commissioner of Banks, and the Savings Banks Association of Massachusetts have applied to the Board for exemptions from the disclosure requirements of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–2809), as implemented by Regulation C (12 CFR 203). The applications of the Commissioner and the Association were filed pursuant to section 306(b) of the Act (12 U.S.C. 2805(b)) and section 203.3(a)(3) and the Supplement to Regulation C (12 CFR 203.3 (a)(3)), and are based upon directives issued on June 14 and July 27, 1976 by the Commissioner. In their applications, the Commissioner and the Association claim that the Commissioner's directives contain requirements that are substantially similar to those imposed under the Federal Act and that State law contains adequate provisions for the enforcement of the State disclosure requirements.

Notice of the Commissioner's application, affording opportunity for interested persons to submit comments, was published in the FEDERAL REGISTER on August 16, 1976 (41 FR 34701). The time for filing comments has expired, and no comments have been submitted. The Board has considered the applications in view of the requirements set forth in section 306(b) of the Act and section 203.3(a)(3) and the Supplement of Regulation C.

In accordance with the disclosure forms prescribed by the Commissioner, the Board interprets the Commissioner's directives as requiring the disclosure by ZIP code area or census tract, as appropriate, of the outstanding portfolio of purchased as well as originated mortgage and home improvement loans, without differentiation between purchases and originations. On the basis of that interpretation and the record, the Board has determined that the directives of the Commissioner impose disclosure requirements that are substantially similar to those imposed under the Federal Act and that applicable Massachusetts law contains adequate provisions for the enforcement of the Commissioner's disclosure requirements.

Accordingly, the applications are hereby approved, and all Massachusetts-chartered depository institutions that are subject to the Commissioner's directive are hereby exempted from the data compilation and disclosure requirements of the Home Mortgage Disclosure Act, as implemented by §§ 203.4 and 203.5 of Regulation C (12 CFR 203.4 and 203.5). This determination is subject to the conditions set forth below and to the provisions of paragraph (e) of the Supplement to Regulation C regarding the Board's right to revoke any exemption if at any time it determines that applicable State law in fact does not impose requirements that are substantially similar to those imposed under the Home Mortgage Disclosure Act or that such law does not contain adequate provisions for enforcement.

Notwithstanding the exemption granted by this Order, any Massachusetts-chartered depository institution that is subject to the disclosure requirements of the Home Mortgage Disclosure Act, as implemented by Regulation C, shall not be exempt from such requirements to the extent that it has an "office" in any "standard metropolitan statistical area" located wholly or partially within Massachusetts that is not covered by a disclosure directive of the Commissioner if that institution originates or purchases "mortgage loans" relating to "residential real property" located in any such area (as the relevant terms are defined in Regulation C). Any such loans shall be disclosed as provided in §§ 203.4 and 203.5 of Regulation C.

The continuation of the exemption granted to certain Massachusetts-chartered depository institutions by this Order is subject to the fulfillment of the following two conditions: (1) That any subsequent disclosure directives of the Commissioner contain reporting requirements that are identical to those set forth in the Commissioner's June 14 and July 27, 1976 directives (except that other areas within Massachusetts may be covered); and (2) that all disclosure statements issued prior to June 28, 1980 under a directive of the Commissioner be retained for public inspection for a period of five years from the date that they are initially disclosed.

By order of the Board of Governors, effective December 8, 1976.

NEW YORK

[Docket No. R–0047]

The State of New York, through the Banking Department, has applied to the Board for an exemption from the disclosure requirements of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801–2809), as implemented by Regulation C (12 CFR 203). The Department's application was filed pursuant to section 306(b) of the Act (12 U.S.C. 2805(b)) and section 203.3(a)(3) and the Supplement to Regulation C (12 CFR 202.3(a)(3)), and is based upon the requirements of the Department's Supervisory Procedure G 107. In its application, the Department claims that its disclosure regulations contain requirements that are substantially similar to those imposed under the Federal Act and that State law contains adequate provisions for the enforcement of the State disclosure requirements.

Notice of the application, affording opportunity for interested persons to submit comments, was published in the FEDERAL REGISTER on July 20, 1976 (41 FR 29917). The time for filing comments has expired, and the Board has considered the application and the comments received in view of the requirements set forth in section 306(b) of the Act and section 203.3(a)(3) and the Supplement of Regulation C.

On the basis of the record and the condition specified in this Order, the Board has determined that the regulations of the Banking Department impose disclosure requirements that are substantially similar to those imposed under the Federal Act and that applicable New York law contains adequate provisions for the enforcement of the Department's disclosure requirements. Accordingly, the application is herbey approved, and all New York-chartered commercial banks, mutual savings banks, and savings and loan associations that are subject to the Department's Supervisory Procedure G 107 are hereby exempted from the data compilation and disclosure requirements of the Home Mortgage Disclosure Act, as implemented by §§ 203.4 and 203.5 of Regulation C. This determination is subject to the condition set forth below and to the provisions of paragraph (e) of the Supplement to Regulation C regarding the Board's right to revoke any exemption if at any time it determines that applicable State law in fact does not impose requirements that are substantially similar to those imposed under the Home Mortgage Disclosure Act or that such law does not contain adequate provision for enforcement.

The continuation of the exemption granted by this Order is subject to the fulfillment of the following condition: that the New York State Banking Department promulgate an amendment to the provisions of its Supervisory Procedure G 107 to require depository institutions subject to that Procedure to disclose all mortgage loans acquired by any means during each fiscal year, commencing with the last full fiscal year ending prior to July 1, 1976, in at least the detail required pursuant to Section I of Appendix 8 of the Procedure. Any amendments to comply with this condition must become effective by June 1, 1977, and a copy of the amendments must be filed with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, by April 1, 1977.

By order of the Board of Governors, effective December 8, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-37461 Filed 12-20-76;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collection information from the public were received by the Regulatory Reports Review Staff, GAO, on December 13, 1976 (FCC), and December 14, 1976 (SEC). 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 receipts.

The notice includes the title of each 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 FCC and SEC requests 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 requests, comments (in triplicate) must be received on or before January 10, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, 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 COMMUNICATIONS COMMISSION

FCC requests clearance of a revision of FCC Form 808, Application for and Certificate of Overtime Service Involving Inspection of Ship Radio Equipment. The Commission has adopted and prescribed in its Rules and Regulations (Section 83.48(a)(12)) the use of this form. FCC Form 808 has been revised under delegation of authority to the Chief, Field Operations Bureau, to include "official number", "port of registry", "gross tonnage" and whether "passenger or cargo" vessel. FCC estimates respondent burden to average 5 minutes per response. The FCC receives approximately 100 applications per year.

SECURITIES AND EXCHANGE COMMISSION

The Directorate of Economic and Policy Research of the Securities and Exchange Commission proposes to survey the users of SEC statistics—to ascertain the extent to which SEC data are used; the uses made of the data; where the users obtain the data; and user comments on the periodicity; amount of detail and timeliness of the data. The new single time survey will go to those type of individuals most likely to need and use financial data, e.g., economists, financial analysts, finance professors and financial writers. SEC estimates burden to average 12 minutes per response and potential respondents to number 15,000.

NORMAN F. HEYL,
Regulatory Reports, Review Officer.

[FR Doc.76-37482 Filed 12-20-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Meeting

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Neurologic Drugs Advisory Committee: ad hoc panel on Reye Syndrome.	Jan. 10, 9:30 a.m., Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9:30 a.m. to 10:30 a.m.; open committee discussion 10:30 a.m. to 4:30 p.m.; Eileen F. Barker, (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3870.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in neurologic diseases.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion on the review of epidemiologic surveillance of Reye Syndrome; review of adverse reaction reports for antiemetics; review of labeling for antiemetics; review and discussion of indications for antiemetic use in children; review of metabolic changes in Reye Syndrome; and review of clinical management of Reye Syndrome.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of § 2.307 (21 CFR 2.307) of FDA's regulations relating to public advisory committees.

Dated: December 16, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-37505 Filed 12-20-76;8:45 am]

ADVISORY COMMITTEES

Notice of Meetings

This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Obstetrical and Gynecological Panel.	Jan. 10, 9 a.m., Room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Lillian Yin, Ph. D., (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to obstetrical and gynecological devices to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by December 30, 1976, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The panel will review the draft obstetrical and gynecological device classification report.

Committee name	Date, time, and place	Type of meeting and contact person
2. Endoscopic and Electrosurgical Devices Subcommittee of the Obstetrical and Gynecological Panel.	Jan. 11, 9 a.m., Room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m. open committee discussion 10 a.m. to 4 p.m.; Lillian Yin, Ph. D., (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to endoscopic and electrosurgical devices to the executives secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by December 31, 1976, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussions. The subcommittee will discuss the safety and effectiveness of endoscopic and electrosurgical devices. The subcommittee will draft guidelines for a product development protocol for laparoscopic bipolar coagulators.

Committee name	Date, time, and place	Type of meeting and contact person
3. Oncologic Drugs Advisory Committee.	Jan. 13 and 14, Conference Room F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 13, 9 a.m. to 10 a.m.; open committee discussion Jan. 13, 10 a.m. to 4 p.m.; closed committee deliberations Jan. 14, 9 a.m. to 9:15 a.m.; open committee discussion Jan. 14, 9:15 a.m. to 2:30 p.m.; C. H. Maxwell, M.D. (HFD-150), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5197.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the history of the Federal Food, Drug, and Cosmetic Act, definition of a new drug, combination chemotherapy policy, conflict of interest in oncologic drugs, policy effectiveness standards for new drug applications (NDA's), Tamoxifen (NDA17-970), action report, new NDA's, previous minutes, and other committee business.

Closed committee deliberations. Review and dicussion of new investigational new drugs (IND's) in the Division of Oncology and Radiopharmaceuticals. This portion of the meeting will be closed to protect trade secret data (5 U.S.C. 552 (b) (4)).

Committee name	Date, time, and place	Type of meeting and contact person
4. Cardiovascular and Renal Advisory Committee.	Jan. 17 and 18, Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 17, 9 a.m. to 10 a.m.; open committee discussion Jan. 17, 10 a.m. to 4 p.m., Jan. 18, 9 a.m. to 12:30 p.m.; Joan C. Standaert, (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of new drug application for Norpace (NDA 17-447); of new guidelines for advisory committees; and action report on previous committee recommendations.

Committee name	Date, time, and place	Type of meeting and contact person
5. Pulmonary Functions and Respiratory Therapy Subcommittee of the Anesthesiology Panel.	Jan. 26, 9 a.m., Room 1813, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Franklyn K. Coombs, P.E., (HFK-450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7226.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the classification of pulmonary function devices as listed below to the executive secretary.

The subcommittee will continue to modify the device list in order to have generic terms which are descriptive of the devices used in this specialty area. Public comments on the device list are welcome.

Open committee discussion. The subcommittee will continue to complete the supplementary data sheets for the following devices: spirometer; respirometer; peak flow meter; inspiratory force motor; incentive post-operative spirometer radioisotopic pulmonary function systems; body plethysmograph; gas analyzer, O_2; gas analyzer, CO_2; gas analyzer, CO; gas analyzer, N_2; gas chromatograph, CO_2; gas chromatograph, CO; gas chromatograph, O_2; gas chromatograph, H_2; gas chromatograph, He; mass spectrograph, N_2; mass spectrograph, CO; mass spectrograph, O_2; mass spectrograph, CO_2; blood gas analyzer, O_2; blood gas analyzer, CO_2; blood gas analyzer, CO; blood pH analyzer; flow transducer; pressure transducer; flow calibrator; pressure calibrator; volume calibrator; barometer; humidity monitor; collecting systems; esophageal balloon; predicted value calculator; pulmonary functions calculator; interpretive pulmonary functions calculator; CO_2 adsorbers; nose clips; calibration gas mixing pump; treadmill; ergometer; biopsy needle; biopsy brush; biopsy forceps; biopsy curette.

Committee name	Date, time, and place	Type of meeting and contact person
6. Dental Panel	Jan. 27 and 28, 9 a.m., Room 4131, HEW-N, 330 Independence Ave. SW., Washington, D.C.	Open public hearing Jan. 27, 9 a.m. to 10 a.m.; open committee discussion Jan. 27, 10 a.m. to 4 p.m., Jan. 28, 9 a.m. to 4 p.m.; D. Gregory Singleton, D.D.S., (HFK-460), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to those devices listed below to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by January 15, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. Review of classification and completion of supplementary data sheets for the following devices: hand instruments; calculus removal devices; diamond instruments; hand pieces and accessories; ultrasonic prophylaxis unit; denture reliners, pads, and cushions; denture repair kits; pulp canal filling materials and accessories; denture base relining material; sealant, pit and fissure conditioner.

Committee name	Date, time, and place	Type of meeting and contact person
7. Orthopedic Panel	Jan. 28, 9 a.m., Room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; James G. Dillon, Ph. D., (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to classification of orthopedic devices to James G. Dillon, Ph.D., Executive Secretary. Submission of data relative to tentative classification findings is also invited.

Open committee discussion. In accordance with the Medical Device Amendments of 1976 (Pub. L. 94-295), the panel will review the available information and classify the following devices: finger, toe, elbow, carpal, total wrist, knee, shoulder, upper humerus, ankle, hip, interpositional, tendon (passive) prostheses; clamps, curettes, cutting instruments, drills, burrs, guides, mallets, rasps, broaches, files, reamers, retractors, elevators, extractors and impactors, forceps, pliers, wrenches, calipers, depth gauges, goniometers, dynamometers, cement mixers, orthopedic fasteners, fixation devices, arthroscopes, implants for total bone replacement, spinal fixation devices, and hemiarthroplasties.

Any organization or person interested in presenting scientific data or information pertinent to the panel's classification activities should contact the panel's executive secretary.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed

where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of § 2.307 (21 CFR 2.307) of FDA's regulations relating to public advisory committees.

Dated: December 16, 1976.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.76-37506 Filed 12-20-76;8:45 am]

ADVISORY COMMITTEES

Notice of Meetings

This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and the FDA regulations, 21 CFR Part 2, Subpart D, relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Obstetrics and Gynecology Advisory Committee.	Jan. 6, 9 a.m. Conference Rooms G and H, Parklawn Bldg., 5600 Fishers Lane Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; A. T. Gregoire, Ph. D., (HFD-130), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3510.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Any interested persons may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the concepts of revision of clinical guidelines for testing of systematic contraceptive products.

Committee name	Date, time, and place	Type of meeting and contact person
2. Antimicrobial Panel	Jan. 7 and 8, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 7, 9 a.m. to 10 a.m.; open committee discussion Jan. 7, 10 a.m. to 4:30 p.m; Jan. 8, 9 a.m. to 4:30 p.m.; Armond M. Welch, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
3. Dentifrice and Dental Care Panel.	Jan. 12 and 13, 9 a.m., Conference Room L, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 12, 9 a.m. to 10 a.m.; open committee discussion Jan. 12, 10 a.m. to 4:30 p.m., Jan. 13, 9 a.m. to 4:30 p.m.; Michael D. Kennedy, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
4. Ophthalmic Panel	Jan. 13 and 14, 9 a.m., Room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing Jan. 13, 9 a.m. to 10 a.m.; open committee discussion Jan. 13, 10 a.m. to 5 p.m.; open public hearing Jan. 14, 9 a.m. to 10 a.m.; open committee discussion Jan. 14, 10 a.m. to 5 p.m.; James G. Dillon, (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to classification of ophthalmic devices to James G. Dillon, Ph. D., Executive Secretary. Submission of data relative to tentative classification findings is also invited.

Open committee discussion. In accordance with the Medical Device Amendments of 1976, the Ophthalmic Device Classification Panel will review the available information and classify the following devices: cornea measuring devices, diagnostic lenses, electrodiagnostic equipment, diagnostic devices, entopic phenomena testing devices, glare threshold testing devices, haploscopes, steroscopes,

diploscopes, refraction measuring devices, visual acuity testing devices, visual field testing devices, surgical devices, therapeutic lenses and accessories, and visual aids.

Any organization or person interested in presenting scientific data or other information pertinent to the panel's classification activities should contact the panel's executive secretary.

Committee name	Date, time, and place	Type of meeting and contact person
5. Cardiovascular Panel	Jan. 14, 9 a.m., Room 5169, HEW-N, 330 Independence Ave. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Glenn A. Rahmotiler, (HFK-450), 8757 Georgia Ave., Silver Spring, Md 20910, 301-427-7226.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the classification of cardiovascular devices to Glenn A. Rahmoeller, Executive Secretary.

Open committee discussion. The panel members will review the supplementary data sheets for the following devices: densitometers, fiberoptic oximeter catheters, flowmeters, intracavitary phono catheter systems, guide holders, steerable catheters, vessel dilators, isolation transformers, line isolation monitors, signal isolation systems, biopotential amplifiers (e.g., ECG), patient transducer and electrode cables, plethysmographs (impedance), transducer amplifiers (e.g., blood pressure), medical oscilloscopes, biopotential signal conditioners (ECG signal conditioners), blood pressure alarms, blood pressure computers, leakage current alarms, external transcutaneous cardiac pacemakers (noninvasive), pacemaker electrode testers, pacemaker function analyzers, pacemaker lead adapters, pacemaker service kits, pacemaker test magnets, valve holders, valve sizers, adapters, arterial bypass catheters, blood reservoirs, coronary perfusion pressure monitors, coronary pressure gauges, deformers, fittings, heat exchangers, intracardiac suckers, intracardiac suction controls, level sensing controls, oxygen controllers, oxygen sensors, pump speed controls, pumps, temperature controllers, tubing, vascular catheters and cannulae, saws, pacemaker dacron mesh bags, hyperthermia devices, hypothermia devices, intraluminal artery strippers, vascular clamps, external cardiac compressors (electrically powered), external cardiac compressors (manually powered), fogarty catheters (embolectomy catheters).

Committee name	Date, time, and place	Type of meeting and contact person
6. Blood and Blood Derivatives Panel.	Jan. 14 and 15, 9 a.m., Room 130, 6110 Executive Blvd., Rockville, Md.	Open public hearing Jan. 14, 9 a.m. to 10 a.m.; open committee discussion Jan. 14, 10 a.m. to 12 m.; closed committee deliberations Jan. 14, 1 p.m. to 4 p.m.; open committee discussion Jan. 14, 4 p.m. to 5:30 p.m., Jan. 15, 8:30 a.m. to adjournment; Clay Sisk, (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of previous meeting's minutes; plasma fractionation, generic issues; letters or other communications received; generic reviews of plasma fractionation products; and generic reviews of stored red blood cell products.

Closed committee deliberations. Review of data submissions of producers of plasma fractionation products including Fibrinogen (human), Antihemophilic Factor (human), Factor IX Complex (human), Rh_o (D) Immune Globulin (human), Plasma Protein Fraction (human), and Normal Serum Albumin (human). This portion of the meeting will be closed to permit discussion of trade secret manufacturing processes (5 U.S.C. 552(b)(4)).

Committee name	Date, time, and place	Type of meeting and contact person
7. Contraceptive and Other Vaginal Drug Products Panel.	Jan. 14 and 15, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 14, 9 a.m., to 10 a.m.; open committee discussion Jan. 14, 10 a.m. to 4:30 p.m.; Jan. 15, 9 a.m. to 4:30 p.m.; Armond M. Welch, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
8. Miscellaneous External Drug Products Panel.	Jan. 14 and 15, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 14, 9 a.m. to 10 a.m.; open committee discussion Jan. 14, 10 a.m. to 4:30 p.m., Jan. 15, 9 a.m. to 4:30 p.m.; Michael D. Kennedy, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
9. Hemorrhoidal Panel	Jan. 22 and 23, 9 a.m., Holiday Inn, Bethesda, Md.	Open public hearing Jan. 22, 9 a.m. to 10 a.m.; open committee discussion Jan. 22, 10 a.m. to 4:30 p.m., Jan. 23, 9 a.m. to 4:30 p.m.; Thomas D. DeCillis, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

The panel will be reviewing, voting upon, and modifying its draft report in preparation for submission to the Commissioner.

Committee name	Date, time, and place	Type of meeting and contact person
10. Microbiology Subcommittee of the Diagnostic Products Advisory Committee.	Jan. 24 and 25, 9 a.m., Room 6821, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing Jan. 24, 9 a.m. to 10 a.m.; open committee discussion Jan. 24, 10 a.m. to 5 p.m.; Jan. 25, 10 a.m. to 5 p.m.; Thomas M. Tsakeris, (HFK-200), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to data relative to tentative classification findings to Thomas M. Tsakeris, Head of Classification.

Open committee discussion. The Microbiology Subcommittee will discuss the classification of microbiological culture media products.

Committee name	Date, time, and place	Type of meeting and contact person
11. National Advisory Food and Drug Committee.	Jan. 24 and 25, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Jan. 24, 9 a.m. to 10 a.m.; open committee discussion Jan. 24, 10 a.m. to 4 p.m., Jan. 25, 9 a.m. to 1 p.m.; William V. Whitehorn, M.D., (HFG-1), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1547.

General function of the committee. Reviews and evaluates agency programs and advises on policy matters of national significance as they relate to the statutory mission of the Food and Drug Administration in the areas of foods, drugs, cosmetics, medical devices, biological products, and electronic products. Reviews and makes recommendations on applications for grants-in-aid for research projects relevant to the mission of the Food and Drug Administration as required by law.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Agenda items to be announced.

Committee name	Date, time, and place	Type of meeting and contact person
12. Viral Vaccines and Rickettsial Vaccines Panel.	Jan. 24 and 25, 9 a.m., Room 130, 6110 Executive Blvd., Rockville, Md.	Open public hearing Jan. 24, 9 a.m. to 10 a.m.; open committee discussion Jan. 24, 10 a.m. to 4 p.m., Jan. 25, 9 a.m. to 4 .m.; Jack Gertzog, (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested person may present data, information or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of communications received and presentation by staff members on the Cell Substrate Program of the Bureau of Biologics.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman't discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 2, Subpart D, published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148).

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of § 2.307 (21 CFR 2.307) of FDA's regulations relating to public advisory committees.

Dated: December 16, 1976.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.76-37507 Filed 12-20-76;8:45 am]

National Institutes of Health

ARTERIOSCLEROSIS AND HYPERTENSION ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis and Hypertension Advisory Committee, National Heart, Lung, and Blood Institute, February 10-11, 1977, Holiday Inn of Chevy Chase, 5520 Wisconsin Avenue, Lobby Room, Chevy Chase, Maryland.

The entire meeting will be open to the public from 9:00 am to 6:00 pm on Thursday, February 10 and from 9:00 am to 3:00 pm on Friday, February 11, to evaluate program support in Arteriosclerosis and Hypertension. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, Room 5A-03, Building 31, National Institutes of Health, Bethesda, Maryland 20014, Phone (301) 496-4236, will provide summaries of the meeting and rosters of committee members.

Dr. Gardner C. McMillan, Associate Director for Etiology of Arteriosclerosis and Hypertension Program, NHLBI, Room C803, Landow Building, National Institutes of Health, Bethesda, Maryland 20014, Phone (301) 496-1613, will furnish substantive program information.

Dated: December 15, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-37396 Filed 12-20-76;8:45 am]

BLOOD DISEASES AND RESOURCES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, January 24 and 25, 1977, Holiday Inn of Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20014.

The entire meeting will be open to the public from 9 am-5 pm, January 24, and from 8:30 am-4:30 pm, January 25, 1977, to discuss the status of the Blood Diseases and Resources program, needs and opportunities. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes

of Health, Bethesda, Maryland 20014, phone: (301) 496–4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Fann Harding, Special Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Building 31, Room 5A04, National Institutes of Health, Bethesda, Maryland, 20014, phone: (301) 496–5913, will furnish substantive program information.

Dated: December 15, 1976.

SUZANNE L. FREMENAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37394 Filed 12–20–76;8:45 am]

CARDIOLOGY ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, February 8–9, 1977, National Institutes of Health, Building 31, Conference Room 8.

The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. The agenda will include a review of the report on the Artificial Heart Program as well as a preliminary discussion of possible initiatives for 1978. Attendance by the public will be limited to space available.

Mr. Hugh Lee, Acting Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Maryland 20014, phone (301) 496–4236, will provide summaries of the meeting and rosters of the Committee members.

Peter L. Frommer, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Landow Building, Room A922, Bethesda, Maryland 20014, phone (301) 496–5421, will furnish substantive program information.

Dated: December 15, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37395 Filed 12–20–76;8:45 am]

MAMMALIAN DNA FRAGMENTS

Solicitation of Comments on Creation of a Bank

On July 7, 1976, the National Institutes of Health published guidelines for recombinant DNA research. The guidelines were adopted after much discussion and debate within both the scientific and the law communities. They are intended to facilitate the pursuit of research while at the same time minimizing the risk to the public. Certain types of experiments, particularly those involving the creation of DNA chimeras between bacterial and mammalian genes, can only be performed under the most restrictive conditions. Despite these concerns, there are likely to be very significant uses of such materials for biomedical research and diagnostic purposes.

Since the complex large genomes of man and other mammals are now amenable to more detailed study as a consequence of advances in recombinant DNA technology, it is important that a safe, uniform, and reproducible method be developed for replicating and storing their fragments. It has been suggested to the NIGMS by members of the scientific community that a repository or bank of mammalian DNA fragments might provide a useful means for achieving these objectives. A bank of DNA fragments containing reference portions of the human and other mammalian genomes, could help keep order in this rapidly growing field and provide an invaluable national resource for investigators. Use of this bank to replicate the reference material for distribution in a safe form would foster full utilization of this new technology while maintaining compliance with the guidelines, and minimizing risk.

The National Institute of General Medical Sciences is therefore specifically interested in receiving comments on the desirability of establishing a repository of mammalian DNA fragments. Suggestions as to its operation and maintenance will also be welcome. For example, such a repository might solicit and accept defined fragments of DNA in an appropriate form. It is conceivable that the bank might also produce DNA fragments *de novo*, if this proved desirable. These fragments would then be stored, replicated, characterized, and distributed with strict attention to safety.

The National Institute of General Medical Sciences, although interested in the possibility of establishing a repository for mammalian DNA fragments, has come to no conclusion as to its advisability. A decision to proceed will, in part, be based on an evaluation of responses to this notice.

Comments should be sent to Dr. Fred H. Bergmann, Program Director, Genetics Program, National Institute of General Medical Sciences, Bethesda, Maryland 20014 within six weeks of date of publication of this notice.

This notice will also be published in SCIENCE, the "NIH Guide for Grants and Contracts," and the "Nucleic Acid Recombinant Scientific Memoranda."

(Catalog of Federal Domestic Assistance Program Number, 13.862.)

Dated: December 7, 1976.

DONALD S. FREDERICKSON,
Director,
National Institutes of Health.

[FR Doc.76–37390 Filed 12–20–76;8:45 am]

NATIONAL ADVISORY CHILD HEALTH AND HUMAN DEVELOPMENT COUNCIL

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 31, February 1, 1977, Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public on January 31 from 9:00 a.m. to 5:00 p.m. with current status reports and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 1 from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portion of the meeting involves solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Marjorie Neff, Council Secretary, NICHD, Building 31, Room 2A–04, National Institutes of Health, Bethesda, Maryland, Area Code 301—396–1848, will provide summaries of meetings and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864 and 13.865, National Institutes of Health.)

Dated: December 9, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37400 Filed 12–20–76;8:45 am]

NATIONAL ADVISORY COUNCIL ON AGING

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, January 31–February 1, 1977, at the National Institutes of Health, Bethesda, Maryland, Building 1, Conference Room 8. The meeting will be open to the public from 9:00 to 11:00 a.m. on January 31 and from 9:00 a.m. on February 1 until adjournment for remarks, status reports, and discussion of matters relating to program.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 31, from 11:00 a.m. to adjournment

for review, discussion and evaluation of individual initial pending, supplemental, and renewal grant applications. The closed portion of the meeting will involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data such as salaries; and personal information concerning individuals associated with the applications.

Mrs. Suzanna Porter, Council Secretary, National Institute on Aging, Building 31, Room 4B–63, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–5345, will provide summaries of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health.)

Dated: December 15, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37398 Filed 12–20–76;8:45 am]

NATIONAL ADVISORY EYE COUNCIL

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, on January 24, 25, and 26, 1977, in Building 31, Conference Room No. 7, National Institutes of Health, Bethesda, Maryland. This meeting will convene at 9 a.m. on all three days, and be open to the public for opening remarks, discussion of procedural matters and reports on various Institute and Council-related activities until approximately 3:30 p.m. on both Monday and Tuesday, January 24 and 25. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4), 552(b)(5), and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 3:30 p.m. on Monday and Tuesday, and for the entire day until adjournment on Wednesday, January 26, for the review, discussion, and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portions of the meeting involve solely the internal expression of views and judgements of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data such as salaries; and personal information concerning individuals associated with the applications.

Mr. Julian Morris, Head, Office of Scientific Reports and Program Planning, National Eye Institute, National Institutes of Health, Building 31, Room 6A–27, Bethesda, Maryland 20014, telephone (301) 496–5248, will furnish summary minutes of the meeting and a roster of committee members.

Substantive program information may be obtained from Dr. William F. Raub, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A–04, National Institutes of Health, Bethesda, Maryland 20014, telephone (301) 496–4903.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, 13.868, 13.869, 13.870, and 13.871, National Institutes of Health)

Dated: December 9, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37393 Filed 12–20–76;8:45 am]

NATIONAL ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES ADVISORY COUNCIL

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis, Metabolism, and Digestive Diseases Advisory Council and its subcommittees on January 26–28, 1977 in Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. to 10 a.m. on January 26 and from 9 a.m. to 11 a.m. on January 27 to discuss administrative reports. Attendance by the public will be limited to space available.

In addition, the below listed subcommittees of the above Council will have meetings from 10:30 a.m. to 5 p.m. on January 26, 1977: the Digestive Diseases Subcommittee will be held in Room 9A51, Building 31, NIH; the Arthritis, Bone, and Skin Diseases Subcommittee will be held in Room 9A52, Building 31, NIH; the Diabetes, Endocrine, and Metabolic Diseases Subcommittee will be held in Conference Room 10, Building 31, NIH; the Kidney, Urologic and Blood Diseases Subcommittee will be held in Room 7A24, Building 31, NIH.

In accordance with the provisions set forth in sections 522(b)(4), 552(b)(5) and 552(b)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Council and its subcommittees will be closed to the public on January 26, 1977, from 10:30 a.m. to 5 p.m., on January 27, 1977, from 11:00 a.m. to 5 p.m., and on January 28, 1977, from 8:30 a.m. to 12:30 p.m., for the review, discussion and evaluation of individual initial pending, supplemental and renewal grant applications. The closed portions of the meetings involve solely the internal expression of views and judgments of committee members on individual grant applications containing detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications.

Messrs. James N. Fordham or Lee E. Treacy, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, (301) 496–3583, will provide summaries of the meeting and rosters of the committee members.

(Catalog of Federal Domestic Assistance Program No. 13–846 through 13.850, National Institutes of Health.)

Dated: December 15, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37399 Filed 12–20–76;8:45 am]

PRIMATE RESEARCH CENTERS ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Primate Research Centers Advisory Committee, Division of Research Resources, January 27, 1977, National Institutes of Health, Bldg. 14G, Room 104, Bethesda, Maryland 20014. The meeting will be open to the public from 9 a.m. to 4 p.m., during which time the report, "Assuring the Resources for Biomedical Research, An Evaluation of the Scientific Mission of the Division of Research Resources (DRR), NIH," conducted by the Research Resources Evaluation Panel and coordinated by Bolt, Beranek and Newman, Inc., Cambridge, MA, will be discussed. The Committee will focus its deliberations on Appendix C, Report of the Subpanel on the Animal Resources Programs of DRR, NIH, with particular reference to the evaluation of the role of the Primate Centers Program in the scientific mission of the Division of Research Resources. Responses to recommendations in the report will be developed. Attendance by the public will be limited to space available.

Mr. James Augustine, Information Officer, Division of Research Resources, Building 31, Room 5B39, Bethesda, Maryland 20014, 301/496–5545, will provide summaries of the meeting and rosters of Committee members. Dr. Dennis Johnsen, Executive Secretary, Primate Research Centers Advisory Committee, Building 31, Room 5B33, Bethesda, Maryland 20014, 301/496–5507 will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.306, National Institutes of Health.)

Dated: December 15, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.76–37391 Filed 12–20–76;8:45 am]

REVIEW OF RESEARCH CONTRACT PROPOSALS

Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attend-

ance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552(b)(4) and 552(b)(6) of Title 5, U.S. Code and section 10(d) of Pub. L. 92-463 for the review, discussion and evaluation of individual research contract proposals as indicated. The proposals contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of the meetings and rosters of committee members upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings are at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

COMMITTEE ON CANCER IMMUNODIAGNOSIS

Date: January 10, 1977; 1:00 p.m.
Place: Building 10, Conference Room 4B14, National Institutes of Health.
Times—Open: January 10, 1:00 p.m.–1:30 p.m.; Closed: January 10, 1:30 p.m.—adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Mrs. Judith M. Whalen.
Address: Building 10, Room 4B17, National Institutes of Health.
Phone: 301/496-1791.
(Catalog of Federal Domestic Assistance Number 13.394 National Institutes of Health.)

COMMITTEE ON CYTOLOGY AUTOMATION

Date: January 12–14, 1977; 9:00 a.m.
Place: Building 31A, Conference Room 4, National Institutes of Health.
Times: Open: January 12, 9:00 a.m.–10:00 a.m.; Closed: January 12, 10:00 a.m.–5:00 p.m., closed: January 13, 9:00 am.m.–5:00 p.m., closed: January 14, 9:00 a.m.–5:00 p.m.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Bill Bunnag.
Address: Building 10, Room 1A21, National Institutes of Health.
Phone: 301/496-5282.
(Catalog of Federal Domestic Assistance Number 13.394 National Institutes of Health.)

BREAST CANCER TREATMENT COMMITTEE

Date: January 13, 1977; 8:30 a.m.
Place: Building 31C, Conference Room 9, National Institutes of Health.
Times: Open: January 13, 8:30 a.m.–12:00 noon; Closed: January 13, 1:00 p.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Mary E. Sears.
Address: Landow Building, Room A404, National Institutes of Health.
Phone: 301/496-6773.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health.)

BREAST CANCER EPIDEMIOLOGY COMMITTEE

Dates: January 13–14, 1977; 8:30 a.m.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Times: Open: January 13, 8:30 a.m.–10:30 a.m.; Closed: January 13, 10:30 a.m.–5:00 p.m., Closed: January 14, 8:30 a.m.–5:00 p.m.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Elizabeth P. Anderson.
Address: Landow Building, Room A406, National Institutes of Health.
Phone: 301/496-6718.
(Catalog of Federal Domestic Assistance Number 13.394 National Institutes of Health.)

DRUG DEVELOPMENT COMMITTEE

Date: January 13–14, 1977; 9:00 a.m.
Place: Arthur D. Little, Inc., 30 Memorial Drive, Cambridge Mass. 02142.
Times: Open: January 13, 9:00 a.m.–adjournment.
Agenda/Open Portion: To discuss and review (1) progress to date and projected studies under contract with Arthur D. Little for Screening and Detailed Evaluation of Antitumor Agents and Combined Chemotherapy and Modality Studies; and (2) progress to date and projected studies under contract with Radiobiological Institute, Organization for Health Research for Studies on the Combination of Radiation and Chemotherapy.
Closed: January 15, 9:00 a.m.-adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Mrs. Naomi T. FitzGibbon. Address: Blair Building, Room 5A09, National Institutes of Health.
Phone: 301/427-7263.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health.)

BREAST CANCER DIAGNOSIS COMMITTEE

Date: January 13–14, 1977; 8:30 a.m.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open: January 13, 8:30 a.m.–9 a.m. Open: January 14, 8:30 a.m.–9:30 a.m.; Closed: January 13, 9 a.m.–5 p.m. Closed: January 14, 9:30 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Bernice T. Radovich.
Address: Landow Building, Room B404, National Institutes of Health.
Phone: 301/496-6773.
(Catalog of Federal Domestic Assistance Number 13.394 National Institutes of Health.)

BREAST CANCER EXPERIMENTAL BIOLOGY COMMITTEE

Dates: January 13–14, 1977; 8:30 a.m.
Place: Landow Building, Room C418, 7910 Woodmont Avenue, Bethesda, Maryland 20014.
Times: Open: January 13, 8:30 a.m.–9:30 a.m.; Closed: January 13, 9:30 a.m.–5:00 p.m., Closed: January 14, 8:30 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. D. Jane Taylor.
Address: Landow Building, Room A422, National Institutes of Health.
Phone: 301/496-6718.
(Catalog of Federal Domestic Assistance Number 13.396 National Institutes of Health.)

CANCER CONTROL COMMUNITY ACTIVITIES REVIEW COMMITTEE

Date: January 20–21, 1977; 8:30 a.m.
Place: Building 31C, Conference Room 8, National Institutes of Health.
Times: Open: January 20, 8:30 a.m.–10:30 a.m.; Closed: January 20, 10:30 a.m.–5:00 p.m., Closed: January 21, 8:30 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Robert Browning.
Address: Blair Building, Room 7A07, National Institutes of Health.
Phone: 301/427-7945.
(Catalog of Federal Domestic Assistance Number 13.399 National Institutes of Health.)

VIRUS CANCER PROGRAM SCIENTIFIC REVIEW COMMITTEE A

Date: January 24–25, 1977; 9:00 am.
Place: Landow Building, Room C418, 7910 Woodmont Avenue, Bethesda, Maryland 20014.
Time: Open: January 24, 9:00 a.m.–9:30 a.m.; Closed: January 24, 9:30 a.m.–5:00 p.m., Closed: January 25, 9:00 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Clarice Gaylord.
Address: Landow Building, Room C306, National Institutes of Health.
Phone: 301/496-6085.
(Catalog of Federal Domestic Assistance Number 13.393 National Institutes of Health.)

COMMITTEE ON CANCER IMMUNOTHERAPY

Dates: January 27, 1977; 1:00 p.m.
Place: Building 10, Conference Room 4B14, National Institutes of Health.
Times: Open: January 27, 1:00–1:30 p.m. Closed: January 27, 1:30 p.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. George M. Steinberg.
Address: Building 10, Room 4B09, National Institutes of Health.
Phone: 301/496-1791.
(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health.)

CANCER CONTROL INTERVIEW PROGRAMS A REVIEW COMMITTEE

Dates: January 28–29, 1977; 8:30 a.m.
Place: Building 31A, Conference Room 4, National Institutes of Health.
Times: Open: January 28, 8:30 a.m.–11:30 a.m.; Closed: January 28, 11:30 a.m.–5:00 p.m., Closed: January 29, 8:30 a.m.–adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Carlos E. Caban.
Address: Blair Building Room 7A07, National Institutes of Health.
Phone: 301/427-7945.
(Catalog of Federal Domestic Assistance Number 13.399 National Institutes of Health.)

Dated: December 13, 1976.

SUZANNE L. FREMEAU,

Committee Management Officer, National Institutes of Health.

[FR Doc.76-37392 Filed 12-20-76;8:45 am]

WORKSHOP ON BIOCHEMISTRY AND PHYSIOLOGY OF FACTOR VIII

Meeting

The Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, National Institutes of Health, in cooperation with the Scripps Clinic and Research Foundation of La Jolla, California and the National Hemophilia Foundation, New York, is sponsoring a

workshop on the biochemistry and physiology of Factor VIII. The meeting will be held at the Sea Lodge Resort Hotel, La Jolla, California. Meeting times will be:

February 21, 1977, 8:30 a.m. to 6:30 p.m.
February 22, 1977, 8:30 a.m. to 9:00 p.m.
February 23, 1977, 8:30 a.m. to 4:00 p.m.

The purpose of this workshop will be to provide an opportunity for active investigation in this area, to exchange information and to review the current state of knowledge concerning the biochemistry and physiology of Factor VIII. Participants will also assess the direction future research activities should take so that better and more effective means for the treatment of hemophilia will become available through research in this subject.

For additional information, please contact: Dr. Gary J. Nelson, Building 31, Room 4A05, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-5911.

Attendance will be limited to available space only.

Dated: December 15, 1976.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.76-37397 Filed 12-20-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 29296, 29298, 29299, 29300, 29301 and 29302]

NEW MEXICO

Applications

DECEMBER 10, 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 five 4½-inch and one 6⅝-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 8 W.,
Sec. 12, E½NW¼.
T. 30 N., R. 9 W.,
Sec. 27, W½SE¼.
T. 30 N., R. 10 W.,
Sec. 24, lots 4 and 5.
T. 31 N., R. 10 W.,
Sec. 5, lot 5.
T. 32 N., R. 10 W.,
Sec. 32, lot 2.
T. 28 N., R. 12 W.,
Sec. 24, E½NW¼.
T. 29 N., R. 13 W.,
Sec. 35, N½NW¼ and SE¼NW¼.

These pipelines will convey natural gas across 1.078 miles 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 applications 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.76-37442 Filed 12-20-76;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 10, 1976. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by January 3, 1976.

JERRY L. ROGERS,
Acting Chief, Office of Archeology and Historic Preservation.

ALABAMA

Jefferson County

Birmingham, *Lakeview School*, 2800 Clairmont Ave.

Marengo County

Demopolis, *Curtis House*, 510 N. Main.

ARIZONA

Yavapai County

Prescott, *Yavapai County Courthouse*, Courthouse Sq.

MINNESOTA

Cottonwood County

Windom, *Cottonwood County Courthouse*, 10th St.

Douglas County

Osakis, *Johnson, J. B. House*, U.S. 52.

Hennepin County

Excelsior, *Wyer-Pearce House*, 201 Mill St.

Jackson County

Jackson, *Jackson County Courthouse*, Sherman, W. Ashley, 4th, and 5th Sts.

Kanabec County

Mora, *Kanabec County Courthouse*, Maple and Vine Sts.

Lincoln County

Lake Benton, *Lake Benton Opera House*, Benton St. between Fremont and Center St.

Mille Lacs County

Milaca, *Mille Lacs County Courthouse*, 5th Ave., SE. and 2nd St. SE.

Murray County

Currie, *Currie Railroad Turntable*, SR 38.
Slayton, *Murray County Courthouse*, Main and 7th Sts.

Nobles County

Worthington, *Kilbridge, Dr. E. A., Clinic*, 701 11th St.

Ramsey County

St. Paul, *C.S.P.S. Hall*, 381-383 Michigan St.
St. Paul, *Ramsey County Poor Farm Barn*, 2020 White Bear Ave.

Rock County

Jasper, *Jasper Stone Company and Quarry*, off MN 23.
Luverne, *Rock County Courthouse and Jail*, Cedar St., N. and Luverne St., E.

MONTANA

Jefferson County

East Helena vicinity, *Child, W. C., Ranch*, S. of East Helena on SR 518.

Lake County

St. Ignatius vicinity, *Ft. Connah Site*, N of St. Ignatius off U.S. 93.

Meagher County

White Sulphur Springs, *Sherman, Byron R., House (The Castle)*, 310 2nd Ave. NE.

Yellowstone County

Billings, *North, Austin, House (The Castle)*, 622 N. 29th St.
Billings, *O'Donnell, I. D., House*, 105 Clark Ave.

NEW YORK

Kings County

Brooklyn, *Brooklyn Museum*, Eastern Parkway and Washington Ave.

NORTH CAROLINA

Pasquotank County

Elizabeth City, *Elizabeth City Historic District*, irregular pattern along Main St.

PENNSYLVANIA

Berks County

Reading, *Astor Theatre*, 730-742 Penn St.

Centre County

Bellefonte, *Bellefonte Historic District*, roughly bounded by Stony Batte Ardell Alley, Thomas, Armor, Penn, Ridge, and Logan Sts.

Chester County

West Chester, *Chester County Horticultural Hall*, 225 N. High St.

Delaware County

Concordville, *Concord Friends Meetinghouse*, Old Concord Rd.

Erie County

Waterford, *Eagle Hotel*, 32 High St.

Philadelphia County

Philadelphia, *Oakley, Violet, Studio*, 627 St. George's Rd.
Philadelphia, *Strickland, William, House Row*, 215-227 S. 9th St.

Wayne County

South Canaan vicinity, *Octagon Stone Schoolhouse*, 1 mi. SW of South Canaan.

RHODE ISLAND

Providence County

Providence, *Mason, Israel B., House*, 571 Broad St.

Washington County

Hopkinton vicinity, *Tomaquag Rock Shelters*, S of Hopkinton.

WASHINGTON

Island County

Oak Harbor, *Loers, Benjamin, House,* 2046 Swantown Rd.

Jefferson County

Auilcene vicinity, *Quilcene–Quinault Battleground Site,* S of Quilcene.
Port Townsend, *Saunders, James C., House,* Sims Way.

King County

Seattle, *Cornish School,* 710 E. Roy St.

Pierce County

Dupont vicinity, *Sequalitchew Archeological Site,* N of Dupont.
Tacoma, *Drum, Henry, House,* 9 St. Helens.
Tacoma, *Salmon Beach Historic District,* S of Joint Defiance Park on The Narrows.

San Juan County

San Juan Island, *Roche Harbor,* northern San Juan Island.

Skagit County

Anacortes, *Anacortes Public Library,* 1305 8th St.
Mt. Vernon vicinity, *Skagit City School,* 3.5 mi. S of Mt. Vernon on Moore Rd.

Snohomish County

Everett, *McCabe Building,* 3120 Hewitt Ace.

Whatcom County

Bellingham, *Morse, Robert I., House,* 1014 N. Garden St.
Bellingham, *Old Main, Western Washington State College,* 516 High St.
Bellingham, *Roeder, Victor A., House,* 2600 Sunset Dr.
Bellingham, *Young Women's Christian Association,* 1026 N. Forest St.

[FR Doc.76–37091 Filed 12–20–76;8:45 am]

GENERAL MANAGEMENT PLAN, CUYAHOGA VALLEY NATIONAL RECREATION AREA, OHIO

Negative Declaration Regarding Environmental Assessment

After conducting a review of the environmental assessment for the general management plan of the Cuyahoga Valley National Recreation Area, Ohio, the National Park Service has decided not to prepare an environmental impact statement.

In the environmental assessment, the National Park Service examines the effects of three alternative courses of action which address the preservation, development and management of the National Recreation Area. The preferred alternative and the reasons for the selection are announced in the environmental review.

The environmental assessment and the environmental review are on file and will be available for inspection upon request at the Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102; and at Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264. Anyone wishing to comment on these documents should put them in writing and send the comments to the Regional Director at the Omaha address on or before January 21, 1977.

The National Park Service intends to proceed with implementation of the plan at the end of January 21, 1977.

Dated: November 2, 1976.

MERRILL D. BEAL,
Regional Director,
Midwest Region.

[FR Doc.76–37380 Filed 12–20–76;8:45 am]

GATEWAY NATIONAL RECREATION AREA

Deadline for Submitting Written Comments on Draft of General Management Plan Extended

In reference to the Federal notice dated September 22, 1976 concerning public meetings and submission of public comments on the Draft General Management Plan, the period for submission of written comments has been extended from December 20, 1976 to January 19, 1977. Statements may be sent to:

Superintendent, Gateway National Recreation Area, Floyd Bennett Field, Building No. 69, Brooklyn, New York 11234.

Dated: December 3, 1976.

JOE ANTOSCA,
Superintendent, Gateway
National Recreation Area.

[FR Doc.76–37379 Filed 12–20–76;8:45 am]

SIVERTSON BROS. FISHERIES

Intention To Issue Concession Permit

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Superintendent, Grand Portage National Monument, proposes to issue a concession permit to Silvertson Bros. Fisheries, authorizing them to operate boat transportation service for the public and use certain Government owned docks located in Grand Portage National Monument and Isle Royale National Park for a period of four years from January 1, 1977 through December 31, 1980.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the human environment, and that it is not a major Federal action under the National Environmental Policy Act and the guidelines of the Council on Environmental Quality. The environmental assessment may be reviewed in the Midwest Regional Office, 1709 Jackson Street, Omaha, Nebraska 68102, and in the Office of the Superintendent, Grand Portage National Monument, P.O. Box 666, Grand Marais, Minnesota 55604.

The foregoing concessioner has performed its obligations under an existing permit to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the issuance of a new permit.

The foregoing concessioner has two concession permits with the National Park Service. One issued by Grand Portage National Monument, which authorizes pick-up and discharge of passengers from a Government owned dock in Grand Portage. This permit expires by limitation of time December 31, 1980. The second permit, which is the subject of this Notice, was issued by Isle Royale National Park to authorize boat transportation and use of Government owned docks within Isle Royale. This permit expires by limitation of time December 31, 1976.

It is the intention of the National Park Service to provide continuation of the services authorized in the existing Isle Royale permit by amendment of the existing permit issued by Grand Portage National Monument to include the provisions of the Isle Royale permit, thereby eliminating the necessity of two permits.

However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this Notice. Any proposal to be considered and evaluated must be submitted on or before January 21, 1977.

Interested parties should contact the Superintendent, Grand Portage National Monument, P.O. Box 666, Grand Marais, Minnesota 55604.

Dated: October 29, 1976.

JOHN M. MOREHEAD,
Superintendent.

[FR Doc.76–37401 Filed 12–20–76;8:45 am]

Office of Hearings and Appeals

[Docket No. M 77–37]

CLINCH VALLEY COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Clinch Valley Coal Corporation has filed a petition to modify the application of 30 CFR 75.1710 to its No. 2 Mine located in Tazewell County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710–1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially

constructed caponies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's equipment consists of three S&S scoops which are 34 to 37 inches in height with a length of 25 feet and 6 inches, and a width of 9 feet to 10 feet 7 inches; one Galis 300 roof bolter; one Paul's roof bolter which is 24 inches in height, 9 feet in length and 56 incres wide; and one cutter 11 RY Joy which is 43 inches in height, 32 feet long and 7 feet 3 inches wide.

2. Petitioner's mine is 2 years old and has a projected life of 5 to 7 years. Petitioner's mine is located in the lower split of the Upper Horsepen coal seam. The thickness of the coal seam varies from 50 to 56 inches. The average height of the coal seam in those locations where equipment, which is subject to cabs and canopy regulations, is being used is 52 inches. The danger in utilizing cabs and canopies on equipment at each working section stems from the irregularity of height of the coal seam, *i.e.*, undulations up and down.

3. Petitioner has a canopy on its roof bolting machine which stays in the face at all times. Petitioner's scoops must come to the surface to change batteries and the height on the haulway ranges downward to 40 inches. The scoops are 34 to 37 inches high. The cutting machine is 43 inches high and 32 feet long and it gets into the roof at times, even without a canopy installed.

4. An approved full bolting roof control plan is utilized at Petitioner's mine. Employees have been and will continue to be trained in roof and rib control.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 21, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

DECEMBER 13, 1976.

[FR Doc.76-37446 Filed 12-20-76;8:45 am]

[Docket No. M 77-34]

H. & T. COAL CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), H. & T. Coal Co., Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 1 Underground Mine located in Haysi, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710–1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's equipment consists of one roof bolter, one cutting machine, and one spinner loader.

2. Petitioner requests exemption from 30 CFR 75.1710 because the roof at its mine is uneven and because collars are set in place. The height to be cleared at Petitioner's mine ranges from 37 to 44 inches and the installation of canopies would create a danger to Petitioner's employees. The vision of equipment operators would be lessened and consequently would hamper them. In the near future, Petitioner will reach low coal which will go down to about 36 inches.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 21, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

DECEMBER 13, 1976.

[FR Doc.76-37447 Filed 12-20-76;8:45 am]

[Docket No. M 77-38]

PIGEON BRANCH COAL CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Pigeon Branch Coal Co., Inc., has filed a pettion to modify the application of 30 CFR 75.1710 to its No. 7 Mine located in Tazewell County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710–1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's equipment consists of two S&S scoops which are 34 to 37 inches in height with a length of 25 feet and 6 inches, and a width of 9 feet to 10 feet 7 inches; one Paul's roof bolter; one Paul's pinner which is 24 inches in height, 9 feet in length and 56 inches wide; and one cutter 12 RB Joy which is 43 inches in height, 32 feet long and 7 feet 3 inches wide.

2. Petitioner's mine is 5 years old and has a projected life of 5 years. Petitioner's mine is located in the lower split of the Upper Horsepen coal seam. The thickness of the coal seam varies from 35 to 48 inches. The average height of the coal seam in those locations where equipment, which is subject to cabs and canopy regulations, is being used is 36 inches. The danger in utilizing cabs and canopies on equipment at each working section stems from the irregularity of height of the coal seam, i.e., undulations up and down.

3. Petitioner has a canopy on its roof bolting machine which stays in the face at all times. Petitioner's scoops must come to the surface to change batteries, and the height on the haulway ranges downward to 36 inches. The scoops are 34 to 37 inches high. The cutting machine is 43 inches high and 32 feet long, and it gets into the roof at times, even without a canopy installed.

4. An approved full bolting roof control plan is utilized at Petitioner's mine. Employees have been and will continue to be trained in roof and rib control.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 21, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

DECEMBER 13, 1976.

[FR Doc.76-37448 Filed 12-20-76;8:45 am]

[Docket No. M 77-48]

QUARTO MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Quarto Mining Company has filed a petition to modify the application of 30 CFR 75.1700 to its Powhatan No. 4 Mine, located in Monroe County, Ohio.

30 CFR 75.1700 provides:

Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barriers shall not be less than 300 feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

The substance of Petitioner's statement is as follows:

1. Petitioner's Powhatan No. 4 Mine has four wells located in its coal holdings as follows:

Mine No.	State of Ohio	Location in mine
(1) SA 20-5	678A-No. 2	3d set gate entries in South.
(2) SA 20-6	678A-No. 1	2d panel in south.
(3) SA 20-1	646A	Do.
(4) SW 22-6	No record	3d set gate entries in north.

2. The surface locations of the wells are in Section 20, Salem Township and Section 22, Switzerland Township, Monroe County, Ohio. The boreholes of these wells penetrate the Pittsburgh No. 8 coal seam where Petitioner intends to mine. In wells Numbers SA 20-4, SA 20-6, SW 22-6, the casing was pulled and the wells plugged several years ago. Well Number SA 20-1 has the casing and tubing still in the wellbore and is open to the oil sand. The casing and tubing will be pulled prior to beginning plugging operations.

3. The barrier around these wells, required by 30 CFR 75.1700, interferes with Petitioner's (a) maintenance of effective roof control by requiring a hazardous and time-consuming relocation of the longwall shield supports to avoid the barrier, (b) simplification of the mine ventilation system by requiring unnecessary air course changes, and (c) improvement of mining safety and conservation by requiring a barrier of coal when more efficient and secure methods to prevent well gas leaks are available.

4. Extensive research conducted by the U.S. Bureau of Mines and U.S. Energy Research and Development Administration (ERDA) has developed feasible and safe methods to plug abandoned oil wells and eliminate the need for coal barriers around such wells. Reports of this research [1] have concluded that certain plugging methods can effectively prevent explosive well gases from entering the mine during regular mining operations and allow additional safety and operational benefits that are not possible under 30 CFR 75.1700. These methods, which Petitioner proposes to follow, guarantee no less than the same measure of protection afforded miners as 30 CFR 75.1700.

5. In lieu of 30 CFR 75.1700, Petitioner proposes to plug these wells by one of the techniques described in Attachments 2 and 3,[1] depending upon conditions discovered, and then to mine through part of the plugged borehole in a normal mining cycle. Petitioner will notify the Mining Enforcement and Safety Administration (MESA) and Morgantown Energy Research Center, ERDA, before any plugging activity is conducted and prior to mining within 300 feet of the well. At MESA's option, such activity will be conducted in the presence and under the supervision of its personnel. MESA may order Petitioner to suspend or delay all or any part of a mining through project for cause if the duly authorized representative of the Secretary determines that a hazardous condition has been encountered. Such conditions could relate to the failure of the well plug to seal as evidenced by the detection of the tracer gas in the air samples or failure to adequately plug the well as specified. Any changes in the procedures set forth in Attachments 2 and 3 will be made only on approval of MESA's District Manager or his delegate. A copy of the decision on this petition shall be maintained at the mine office and shall be available to the employees of the mine.

6. The following procedures, as more specifically set forth in Attachments 2 and 3, will be followed for plugging the wells: Petitioner will attempt to reopen wells SA 20-5, SA 20-6, and SW 22-6 to their total depth. Well No. SA 20-1 will be opened to its total depth. Gamma ray, neutron, and caliper logs will be taken in each well to determine respectively the depth of all coal beds, the most competent formation for the placement of certain plugs, and the wellbore diameter. A tracer unit of sulfur hexafluoride (an inert, permeable and easily detectable gas) will be placed in the wells, if required by MESA, and a mechanical bridge plug or other device set above it to provide a secure base for subsequent plugs. Expanding cement, flyash cement, and/or gel-water slurry will be injected to various depths in the remainder of the borehole, depending on geologic conditions.

7. The following procedures will be followed for mining through the plug: All mining operations within one hundred and fifty (150) feet of the well will be conducted with the utmost caution and in a nonexplosive atmosphere. In addition to the methane testing procedures in 30 CFR Part 75, a fireboss date-board will be established in the affected area and methane examinations made and recorded at least once per shift by a qualified examiner. Petitioner will take air samples immediately before, during, and after mining through the concrete

[1] The enclosed reports are available for inspection at the address listed in the last paragraph of this notice.

section of the plug between the mine floor and roof. Mining operations will be conducted during Petitioner's normal mining cycle, and at MESA's option, in the presence and under the supervision of MESA personnel. In cooperation with MESA, Petitioner will monitor the mine atmosphere for traces of sulfur hexafluoride for 6 months after mining through the plug.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 21, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

DECEMBER 13, 1970.

[FR Doc.76-37449 Filed 12-20-76;8:45 am]

[Docket No. M 77-29]

RELIABLE COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Reliable Coal Corporation has filed a petition to modify the application of 30 CFR 75.1710 to its Kanes Creek Mine located in Preston County, West Virginia.

30 CFR 75.1710 provides:

An authorized represenative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5)(i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner believes that canopies on its haulage equipment are more of a hazard than a protective device for its personnel. Due to undulations of the top and bottom in its mine, it is technically impossible for Petitioner to keep canopies on its machines. The canopies strike the top of the mine, which varies 38 to 50 inches in height, dislodging roof bolts, and the canopies are so low that the operators cannot see the opposite rib. Petitioner tried canopies on its shuttle cars, which are Joy 16SC, and the cars were not able to progress 10 feet without striking the top.

2. Petitioner believes for humanitarian reasons that these devices, given the conditions in Petitioner's mine, are a hazard.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 21, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

DECEMBER 13, 1976.

[FR Doc.76-37450 Filed 12-20-76;8:45 am]

[Docket No. M 77-26]

T & C COAL CO., INC.

Petiiton for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), T & C Coal Co., Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its Jane Ann No. 10-A Mine, located in Logan County, West Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after Janaury 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner has had approved canopies installed on its roof bolter and Elkhorn scoops. These canopies have been the subject of examination by the operators who are responsible for the safe operation of this equipment and Petitioner has received criticism from these operators as to the safety of canopies.

2. Petitioner is of the opinion that the canopy diminishes the safety conditions within the mine for reasons set forth below:

(a) The canopy tends to reduce the vision of the operator.

(b) The canopy limits the ability of the operator to remove himself from the machine in the event of an emergency.

(c) The canopy on the roof bolter prevents the placement of roof bolts at crosscuts and corners in accordance with the approved roof control plan.

(d) Because of variance in the height of the roof within the mine, the canopy collides with and loosens roof bolts.

3. Petitioner feels that modification of the safety standard will not diminish safety in its mine because of conditions practiced by Petitioner and set forth below:

(a) The company's roof bolt plan requires that four safety jacks or timbers be placed in the face area promptly after completion of the loading cycle, and if additonal support is needed, they are required to be set. This timbering affords adequate protection.

(b) No one is permitted under unsupported top except to set safety posts or jacks.

(c) All brows that overhang 12 inches or more are taken down or secured.

(d) With this roof control plan, the people at this mine have a minimum exposure to falls of room and rib.

4. Because of the foregoing reasons, Petitioner requests relief from the mandatory provisions applicable to canopies on all its equipment that is utilized in seams of under 54 inches.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 21, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

DECEMBER 13, 1976.

[FR Doc.76-37451 Filed 12-20-76;8:45 am]

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

ADVISORY COMMITTEE ON JOINT BOARD ACTUARIAL EXAMINATIONS

Meeting

Notice is hereby given that the Advisory Committee on Joint Board Actuarial Examinations will meet in Room 1425 of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. on January 7, 1977 at 9:30 a.m.

The purposes of the meeting are to discuss topics which may be covered by the Joint Board's examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B), to prepare recommended questions for such examinations and to review other actuarial examinations in order to make recommendations regarding such examinations' adequacy to demonstrate the education and training in actuarial mathematics and methodology required for enrollment by Title 29 U.S. Code, section 1242(a)(1).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in Title U.S. Code, section 552(b)(5), and that the public interest requires such meeting be closed to public participation.

LESLIE S. SHAPIRO,
Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc.76-37385 Filed 12-20-76;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Proposed Allocation of Funds

Notice is hereby given that the Employment and Training Administration has made the following proposed allocation of funds for Fiscal Year 1977 under Title VI of the Comprehensive Employment and Training Act of 1973, P.L. 93-203, as amended:

RATIONALE FOR FORMULA USED IN ALLOCATING FY 1977 CETA TITLE VI DISCRETIONARY FUNDS

The Secretary is proposing to distribute $118.4 million of Title VI discretionary funds to prime sponsors using a formula which meets, to the extent of the funds available, each prime sponsor's requirements for maintaining PSE programs at June, 1976, levels through September of 1977. This decision is made in accordance with provisions of House Joint Resolution number 1105, which stipulated that PSE programs were to be maintained at a level of 310,000.

The determination of the amount to be allocated to each prime sponsor was a three-step procedure. The first step was to determine the total amount required by each prime sponsor in order to continue Titles II and VI programs through September. The second step involved subtraction, from this total need, funds available to the prime sponsor as of June 30, and amounts allocated to each prime sponsor since June 30 for operation of Title II and VI programs. Finally each prime sponsor was allocated a portion of the total discretionary amount equal to the sponsor's net need (as determined in steps one and two) as a percentage of all sponsors' net need.

Data for the computation of the total requirement for each prime sponsor were current enrollment and accrued expenditures as certified by that prime sponsor on quarterly reports to the Department of Labor. All data were combined for Titles II and VI before completing the computations below:

1. Average cost per enrollee for operating these programs for one year was computed for each prime sponsor by dividing accrued expenditures for the twelve month period from July 1, 1975 to June 30, 1976, by the average number of enrollees in the programs at the end of each quarter during that period.

2. Where necessary, annualized costs per enrollee were adjusted to account for changes in the geographic composition of prime sponsor areas during FY 1977, using data provided by affected prime sponsors to ETA regional offices. All rates were also incremented by two percent to offset expected normal increases in the cost of operating these programs in FY 1977.

3. This expected annual enrollee cost was then multiplied by the sponsor's June enrollment level (adjusted for prime sponsor changes, if necessary) and the resultant annualized total need was multiplied by a factor of 1.25 to obtain each prime sponsor's need for a fifteen month period (July, 1976 through September 1977).

The total requirement determined above for each prime sponsor was reduced by:

1. The remaining funds available to each prime sponsor as of June 30, 1976; i.e., the difference between and previously allocated and reported accrued expenditures, in Titles II and VI combined. Where necessary this figure was also adjusted for changes in prime sponsor areas.

2. The prime sponsor's transition quarter (TQ), Title II allocation.

3. The prime sponsor's FY 1977 Title II base allocation (i.e., for the period from October 1 through September 30).

4. The prime sponsor's FY 1977 Title VI base allocation.

The result of these subtractions, if positive, represents each prime sponsor's unfunded need which is to be partially met by this allocation of discretionary funds.

The sponsor's unfunded needs were then summed to obtain a national total. This amount was divided into the 118.4 million dollars available for allocation to determine the proportion the total need which could be funded, and this factor was applied to each sponsor's need to obtain the amounts shown in the accompanying table.

The procedures described closely adhere to the explicit intent of the joint resolution. Every effort was made to ensure that the data used were as certified by prime sponsors and that extenuating circumstances admissible under the intent of the joint resolution were taken into account prior to allocating these funds.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PUBLIC SERVICE JOBS PROGRAM TITLE VI—DISCRETIONARY—FISCAL YEAR 1977 CONTINUING RESOLUTION

	Proposed Distribution
Bridgeport Consortium	683,616
Hartford Consortium	531,276
New Haven Consortium	171,581
Waterbury City	25,652
Connecticut total	1,412,125
Penobscot/Hancock CSRT	15,433
Cumberland County	570,175
Maine total	585,608
Worcester Consortium	98,924
Lowell Consortium	136,136
Massachusetts total	235,060
Hillsborough County	98,364
New Hampshire total	98,364
Balance of Rhode Island	775,523
Rhode Island total	775,523
Vermont Statewide CSRT	201,022
Vermont total	201,022
Region I grand total	3,307,702
Atlantic County	441,473
Burlington County	347,023
Hudson County CRST	1,134,457
Newark City	446,068
Ocean County	298,184
Balance of Passaic County	161,098
Somerset County	46,178
Trenton City	221,079
New Jersey total	3,095,560
Buffalo City	1,554,703
Oneida County	310,317
Orange County	342,022
Saratoga County	127,059
Steuben County	73,761
Syracuse City	30,520

	Proposed Distribution
Westchester Consortium	37,181
New York City	4,051,838
New York total	6,527,401
Bayamon Municipio	388,119
Caguas Municipio	243,611
Carolina Municipio	23,145
Mayaguez Municipio	613,920
Ponce Municipio	454,629
Balance of Puerto Rico	5,156,847
Puerto Rico total	6,880,271
Region II grand total	16,503,232
Delaware Manpower CSRT	377,858
Wilmington City	396,278
Delaware total	774,136
District of Columbia	1,897,625
District of Columbia total	1,897,625
Balance of Maryland	357,475
Western Maryland CSRT	161,972
Maryland total	519,447
Lehigh Valley Consortium	371,624
Philadelphia City/County	4,752,332
Berks County	25,778
Balance of Lackawanna County	154,728
Scranton City	85,977
Luzerne County	451,661
Pittsburgh City	727,336
Washington County	58,165
Westmoreland County	133,789
Southern Allegheny CSRT	352,242
Centre County	2,402
Pennsylvania total	7,116,034
Roanoke Consortium	93,452
Balance of Virginia	519,266
Virginia total	612,718
West Virginia St wide CSRT	3,742,008
West Virginia total	3,742,008
Region III grand total	14,661,968
Mobile Consortium	62,209
Montgomery Consortium	47,243
Alabama total	109,452
Balance of Florida	680,645
Brevard County	689,209
Escambia County	68,516
Heartland Manpower CSRT	608,135
Palm Beach County	536,668
Tampa Consortium	191,691
Florida total	2,774,864
CSRA Consortium	296,397
Atlanta City	1,536,747
Cobb County	39,221
Columbus Area Consortium	177,598
Mid Georgia Consortium	204,507
Savannah/Chatham CSRT	75,267
Georgia total	2,329,737
Balance of Kentucky	990,407
Kentucky total	990,407
Balance of Mississippi	1,046,779
Mississippi total	1,046,779
Alamance County	33,623
Buncombe County	13,013
Charlotte City	228,090
Durham Consortium	137,146
Greensboro Consortium	25,985
Onslow County	15,870
Raleigh Consortium	135,874
Winston Salem Consortium	614,140
Davidson County	50,066
North Carolina total	1,253,807
South Carolina Statewide	5,064,584
South Carolina total	5,064,584
Chattanooga City	76,403
Memphis Consortium	136,561
Balance of Hamilton County	84,274
Balance of Hamilton County	36,074
Tennessee total	333,312
Region IV grand total	13,902,942
La Salle County	44,259
Madison County Consortium	505,721
St. Clair Consortium	152,073
East St. Louis City	857,093
Shawnee Consortium	650,550
Illinois total	2,209,696
Elkhart County	72,584
Indiana total	72,584
Flint/Genessee Consortium	1,049,546
Jackson Consortium	432,732
Kent Consortium	1,116,388
Calhoun County	188,262
Balance of Macomb County	311,705
Oakland County	1,251,236
Ottawa County	163,281
Saginaw County	349,271
St. Clair County	1,612,600
Ann Arbor City	297,081
Michigan total	6,772,102
Dakota County	217,173
St. Paul City	840,563
Quad Counties CSRT	400,740
Region III Consortium	214,925
Balance of Minnesota	1,254,515
Rural Minnesota CEP	1,175,461
Balance of Hennepin County	714,006
Minneapolis City	335,022
Minnesota total	5,152,405
Butler County	69,802
Lorain County	124,577
Lake/Ashtabula CSRT	542,363
Portage County	200,708
Richland/Morrow CSRT	57,124
Ohio total	994,574
Rock County	193,871
Milwaukee County	988,926
Madison/Dane Consortium	84,716
Balance of Wisconsin	1,372,435
Wisconsin total	2,639,948
Region V grand total	17,841,309
Central Arkansas Consortium	288,217
Texarkana	[1] 437,811
Balance of Arkansas	742,690
Arkansas total	1,468,718
Rapides Parish	106,696
Baton Rouge City	140,807
Calcasieu/Jeff Consortium	174,439
New Orleans City	2,629,136
Jefferson Parish	380,646
Balance of Louisiana	3,186,589
Louisiana total	6,618,313
Albuquerque Consortium	1,165,624
Balance of New Mexico	1,400,666
New Mexico total	2,566,290
Balance of Cleveland County	365,234
Oklahoma total	365,234
Texas Panhandle Manpower	59,048
Southeast Texas Comprehsnsive	58,087
Pasadena City	14,242
Cameron County	358,699
Balance of Dallas County	229,770
Lubbock City	103,337
West Central Texas CSRT	223,973
Galveston County	85,414
Balance of Harris County	130,424
Central Texas Manpower County	62,104
Hidalgo County Consortium	464,143
Alamo Consortium	7,655
Region XI Consortium	41,230
Webb County	325,510
Brazoria Consortium	189,847
Balance of Texas	1,080,737
Texas total	3,434,220
Region VI grand total	14,452,775

[1] The Arkansas Texarkana discretionary includes moneys for Texarkana, Tex.

Balance of Iowa	967,248
Iowa total	967,248
Balance of Kansas	799,151
Kansas City Consortium	308,248
Johnson/Leavenworth Consortium	4,079
Kansas total	1,111,478
Balance of Missouri	359,060
Balance of Jackson County	29,461
Kansas City Consortium	582,018
Independence City	122,918
Missouri total	1,093,457
Lincoln City	26,805
Nebraska total	26,805
Region VII grand total	3,198,988
Denver City/County	25,372
Weld County	8,784
Colorado total	34,156
Balance of Montana	[1] 1,555,021
Montana total	1,555,021
North Dakota Statewide	1,403,107
North Dakota total	1,403,107
Wyoming Statewide Consortium	295,785
Wyoming total	295,785
Region VIII grand total	3,288,069

[1] The Balance of Montana discretionary includes moneys for the Butte rural CEP.

Balance of Arizona	378,848
Phoenix City	1,347,759
Maricopa County	522,247
Arizona total	2,248,854
Berkeley City	65,685
Oakland City	880,878
San Francisco City/County	2,235,884
Sonoma County	166,780
Balance of Los Angeles County	5,485,469
Los Angeles City	2,471,866
Torrance City	32,240
Balance of California	2,146,994
Humboldt County	212,161
Solano County	96,870
Sacramento/Yolo CSRT	379,959
Stockton/San Joaquin Manpower	168,376
Stanislaus County	439,469
Fresno City/County	1,033,787
Kern County	53,765
San Diego RETC	2,689,260
California total	18,559,443
Hawaii Balance of State	533,538
Honolulu City/County	601,539
Hawaii total	1,135,077

	Proposed Distribution
Las Vegas Consortium	465,454
Washoe County	414,986
Nevada total	880,440
Region IX grand total	22,823,814
Balance of Alaska	500,297
Alaska total	500,297
Idaho Statewide CSRT	959,674
Idaho total	959,674
Jackson County Consortium	236,617
Balance of Oregon	698,128
Oregon total	934,745
King/Snohomish Consortium	1,985,831
Kitsap County	426,225
Tacoma City	10,922
Balance of Pierce County	107,563
Yakima County	535,513
Balance of Washington	2,958,421
Washington total	6,024,475
Region X grand total	8,418,191
National grand total	118,399,990

Signed at Washington, D.C. this 17th day of December, 1976.

ALBERT J. ANGEBRANNDT,
Administrator, Administration and Management.

[FR Doc.76-37612 Filed 12-20-76;8:45 am]

Office of the Secretary

[TA-W-1,303]

ARCTIC DISTRIBUTORS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 29, 1976 the Department of Labor received a petition dated November 16, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Arctic Distributors, Inc., Neenah, Wisconsin, a wholly owned subsidiary of Arctic Enterprises, Inc., Thief River Falls, Minn. (TA-W-1,303). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the distribution of snowmobiles provided by Arctic Distributors, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 29th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37306 Filed 12-20-76;8:45 am]

[TA-W-1,344]

B.I.F.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of B.I.F., West Warwick, Rhode Island, a division of General Signal Corporation, Stanford, Connecticut (TA-W-1,344). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competiitve with instrumentation systems (mechanical equipment) produced by B.I.F. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substanital interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37307 Filed 12-20-76;8:45 am]

[TA-W-1,335]

CHEMTRON CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of the Louisville, Kentucky, Tube Turns Div. of Chemtron Corporation, Chicago, Ill. (TA-W-1,335) Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon & Stainless steel elbows, flanges, welding flanges, specialty components of rolled & welded pipes produced by Chemtron Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter

of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37308 Filed 12-20-76;8:45 am]

[TA-W-1,336]

CHEMTRON CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Philadelphia, Pa. plant of Chemtron Corporation, Chicago, Illinois (TA-W-1,336). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon and stainless steel elbows, flanges, welding flanges, specialty components of rolled and welded pipes produced by Chemtron Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37309 Filed 12-20-76;8:45 am]

[TA-W-1137]

CONVERSE RUBBER CO. MALDEN, MASSACHUSETTS

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1137: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 5, 1976 in response to a worker petition received on that date which was filed by the United Rubber Workers on behalf of workers and former workers producing canvas and athletic footwear at the Malden, Massachusetts plant of Converse Rubber Company.

The notice of investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47620). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of Converse Rubber Company, its customers, the Department of Commerce, the International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at the Malden plant of Converse Rubber Company decreased 22 percent in 1975 compared to 1974 and 33 percent in the first nine months of 1976 compared to the first 9 months of 1975.

Employment of salaried workers at the Malden plant decreased 22 percent in the first 9 months of 1976 compared to the first 9 months of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of canvas and athletic footwear by Converse Rubber Company declined 12 percent in quantity and 8 percent in value in 1975 compared to 1974 and 12 percent in quantity and 8 percent in value in the first 9 months of 1976 compared to the first 9 months of 1975.

Production at the Malden, Massachusetts plant of Converse Rubber Company declined 37 percent in 1975 compared to 1974 and 42 percent in the first 9 months of 1976 compared to the first 9 months of 1975.

INCREASED IMPORTS

Imports of canvas and athletic footwear by Converse Rubber Company increased 1,011 percent in quantity and 1,012 percent in value in 1975 compared to 1974 and declined 7 percent in quantity and 7 percent in value in the first 9 months of 1976 compared to the first 9 months of 1975.

Imports of athletic footwear increased in absolute terms and relative to domestic production each year from 1971 through 1975, except for 1973 when imports increased absolutely but decreased relative to domestic production. In 1975 imports increased 102 percent in absolute terms. The ratio of imports to domestic production increased from 84.3 percent in 1974, to 148.0 percent in 1975. In the first half of 1976, imports increased 107 percent in absolute terms. The ratio of imports to domestic production increased from 137.1 percent in the first half of 1975 to 201.6 percent in the first half of 1976.

Imports of rubber/canvas footwear increased in absolute terms and relative to domestic production each year from 1972 through 1974. The ratio of imports to domestic production remained stable from 1974 to 1975, then increased from 18.0 percent in the first half of 1975 to 19.9 percent in the first half of 1976.

CONTRIBUTED IMPORTANTLY

Customers of Converse Rubber Company indicated they have decreased their

purchases of canvas and athletic footwear from Converse Rubber Company and have increased their purchase of imported footwear.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with canvas and athletic footwear produced at the Malden, Massachusetts plant of Converse Rubber Company, contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Maden, Massachusetts pant of Converse Rubber Company who became totally or partially separated from employment on or after September 22, 1975 are eligible to apply for adjustment assistance under title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of December 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-37310 Filed 12-20-76;8:45 am]

[TA-W-1,331]

CRANE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Ambridge Valve Repair Division, Ambridge, Pennsylvania, a division of Crane Company, New York, New York (TA-W-1,331). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with repairing valves provided by Crane Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the Petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 76-37311 Filed 12-20-76; 8:45 am]

[TA-W-1,332]

CRANE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Chattanooga Valve Plant, Chattanooga, Tennessee, a division of Crane Company, New York, New York (TA-W-1,332). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with industrial type steel valves produced by Crane Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 22 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 28 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37312 Filed 12-20-76;8:45 am]

[TA-W-1,342]

DIXON VALVE & COUPLING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Philadelphia, Pennsylvania plant of Dixon Valve & Coupling Co., Chestertown, Md. (TA-W-1,342). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has inistituted an investigation as provide in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel valves and couplings produced by Dixon Valve & Coupling Co. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is

filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37313 Filed 12-20-76;8:45 am]

[TA-W-1,322]

FLODAR CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Flodar Corporation, Cleveland, Ohio, a division of Alco Standard Corp., Valley Forge, Pennsylvania (TA-W-1,322). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with hydraulic fittings for machine tools produced by Flodar Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37314 Filed 12-20-76;8:45 am]

[TA-W-1,337]

GALLAND HENNING NOPAK, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Galland Henning Nopak, Inc., Milwaukee, Wisconsin (TA-W-1,337). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with scrap steel processing equipment, metal cutting shears, pneumatic and fluid drive equipment & valves produced by Galland Henning Nopak, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37315 Filed 12-20-76;8:45 am]

[TA-W-1251]

GENERAL ELECTRIC CO. SYRACUSE, NEW YORK

Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 9, 1976 in response to a worker petition received on that date which was filed by Local 320 of the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing transistors, diodes and other semiconductors at the Semiconductor Products Department of the General Electric Company, Syracuse, New York.

Notice of the investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53089). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of the Semiconductor Products Department were previously certified eligible to apply for adjustment assistance on March 11, 1975 under the Trade Expansion Act of 1962 (See TEA-W-255). This certification was automatically continued under the Trade Reform Act of 1974 beginning on April 3, 1975, in accordance with Section 246 of the Trade Reform Act.

The existing certification will expire on March 11, 1977 unless terminated by the Secretary of Labor. Since workers newly separated, totally or partially, are covered by the existing certification provided such separations occurred on or after the impact date (July 14, 1974) and before the certification expiration date (March 11, 1977), a new investigation would serve no purpose; consequently the investigation has been terminated.

Signed at Washington, D.C. this 8th day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37316 Filed 12-20-76;8:45 am]

GROVE VALVE & REGULATOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Grove Valve & Regulator Company, Emeryville, California (TA-W-1,340). Accordingly, the Director Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with valves and regulators produced by Grove Valve and Regulator Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37317 Filed 12-20-76;8:45 am]

[TA-W-1,348]

GULF & WESTERN INDUSTRIES, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Ackerman, Mississippi plant of Gulf & Western Industries, Inc., Oak Brook, Ill. (TA-W-1,348). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with pipe flange connectors produced by Gulf & Western Industries, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37318 Filed 12-20-76;8:45 am]

[TA-W-1,349]

GULF & WESTERN INDUSTRIES, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Somerville, New Jersey plant of Gulf & Western Industries, Inc., Oak Brook, Ill. (TA-W-1,349). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with pipes and piping components produced by Gulf & Western Industries, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37319 Filed 12-20-76;8:45 am]

[TA W-1345]

HAMMOND VALVE DIVISION

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Hammond Valve, Hammond, Indiana, a division of Condec Corporation, Greenwich, Connecticut (TA-W-1345). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brass valves produced by Hammond Valve Division or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37320 Filed 12-20-76;8:45 am]

[TA-W-1333]

ITT CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Warren, Ohio plant of ITT Grinnell Corporation, Providence, Rhode Island, a division of ITT Corporation, New York, New York (TA-W-1333). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel pipe hangers produced by ITT Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37321 Filed 12-20-76;8:45 am]

[TA-W-1090]

JONES AND LAUGHLIN STEEL CORP.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1090: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 24, 1976 in response to a worker petition received on September 24, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing electro-mechanical tubing at the Niles, Ohio plant of Jones and Laughlin Steel Corporation.

The notice of investigation was published in the FEDERAL REGISTER on October 5, 1976 (41 FR 43975). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jones and Laughlin Steel Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that the third and fourth criteria have not been met. The Niles, Ohio plant is part of the Conduit Division of Jones and Laughlin Steel Corporation and produces tubing. The raw material for this plant is steel strip. The strip is cut and rolled into a tubular shape and welded along its seam and given a coating of zinc. The end use of this product is to hold electrical wiring in buildings. One variation of this product that is made at the Niles, Ohio plant is transformer tubing. Transformer tubing is

made by rolling the tubing to give it an oval rather than round cross section. Transformer tubing is used to carry the coolant in large electrical transformers.

INCREASED IMPORTS

More than 90 percent of the output of the Niles, Ohio plant consists of electro-mechanical tubing. U.S. imports of electro-mechanical tubing declined in each year from 11,042 tons in 1971 to 11 tons in 1975. The ratio of imports to domestic production declined from 4.4 percent in 1971 to 0.1 percent in 1973. The ratio of imports to domestic production remained at 0.1 percent in 1974 and 1975.

CONTRIBUTED IMPORTANTLY

Customers of electro-mechanical tubing from Jones and Laughlin reported that they purchase no imported electro-mechanical tubing. Those customers who reduced purchases indicated that a reduction in non-residential construction had reduced demand for electro-mechanical tubing.

Transformer tubing accounts for about six percent of the sales of the Niles, Ohio plant. Jones and Laughlin's customer of this product reported that it had no imported sources of transformer tubing. This customer attributed its reduced purchases from Jones and Laughlin to the decline in sales of large transformers because of reduced construction of generating plants and substations by electric utility companies.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with electro-mechanical tubing produced at the Niles, Ohio plant of Jones and Laughlin Steel Corporation did not contribute importantly to the total or partial separations of the workers at such plant.

Signed at Washington, D.C. this 30th day of November 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-37322 Filed 12-20-76;8:45 am]

[TA-W-1302]

JOSEPH P. CONROY, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 24, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(e) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of Joseph P. Conroy, Inc., Johnstown, New York (TA-W-1302). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ski gloves, mittens and dress gloves produced by Joseph P. Conroy, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 24th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.70-37323 Filed 12-20-76;8:45 am]

[TA-W-1339]

KEROTEST MANUFACTURING CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Kerotest Manufacturing Corp., Pittsburgh, Pennsylvania, a subsidiary of Control Data Corp., Pittsburgh, Pennsylvania (TA-W-1339). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with brass and steel values produced by Kerotest Manufacturing Corp. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37324 Filed 12-20-76;8:45 am]

[TA-W-1346]

MARSH INSTRUMENTS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Marsh Instruments, Skokie, Illinois, a division of General Signal Corporation, Stamford, Connecticut (TA-W-1346). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with bourdon tube pressure gauges produced by Marsh Instruments or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Dec. 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Dec. 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37325 Filed 12-20-76;8:45 am]

[TA-W-1300]

S & S CHILDREN'S APPAREL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 22, 1976 the Department of Labor received a petition dated November 11, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of S & S Children's Apparel Corp., Brooklyn, New York (TA-W-1300). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with children's and ladies' sportswear and dresses produced by S & S Children's Apparel Corp. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 22nd day of November 1976.

MARVIN M. FOOKS,
Director, Office of Adjustment Assistance.

[FR Doc.76-37327 Filed 12-20-76;8:45 am]

[TA-W-1341]

SETTE PRODUCTS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Oakland, California plant of Sette Products Company, Sparks, Nevada (TA-W-1341). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like are directly competitive with barrel faucets for steel drums and zinc produced by Sette Products Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm of subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Dec. 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Dec. 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37326 Filed 12-20-76;8:45 am]

[TA-W-1061]

STM CORP.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1061: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 31, 1976 in response to a worker petition received on August 31, 1976, which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing aluminum electrolytic capacitors at the Hicksville, Ohio plant of STM Corporation, a subsidiary of North American Philips Corporation, New York, New York.

The notice of investigation was published in the FEDERAL REGISTER on Sep-

tember 14, 1976 (41 FR 39115). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of STM Corporation, customers of the Hicksville, Ohio plant, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although criteria (1), (2), and (3) have been met, criterion (4) has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average annual employment at the Hicksville plant declined 72 percent in 1975 from 1974. Layoffs and partial separations occurred at the plant during the third and fourth quarters of 1974 and throughout 1975.

The official closing date for the Hicksville facility was November 14, 1975. Some employees remained at the plant until the end of December 1975 for maintenance and security purposes. All employees had left the plant as of January 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Annual sales by the Hicksville plant declined 5 percent in 1974 from 1973 and declined 75 percent in 1975 from 1974. Total sales by STM Corporation declined 51 percent in 1975 from 1974.

The three plants of the STM subsidiary were consolidated late in 1975. Total sales by STM Corporation increased 9 percent during the first eight months of 1976 compared to the first eight months of 1975. Sales by the Roxboro, North Carolina facility (the location chosen for the consolidation) increased 301 percent during the same period.

INCREASED IMPORTS

Imports of aluminum electrolytic fixed capacitors increased from 156.9 million units valued at 9.3 million dollars in 1971 to 445.8 million units valued at 36.2 million dollars in 1974 and declined to 217.6 million units valued at 20.1 million dollars in 1975.

CONTRIBUTED IMPORTANTLY

Imported capacitors did not contribute importantly to declines in sales, production, and employment at the Hicksville, Ohio plant. The plant closed on account of a management decision to consolidate the three separate facilities of STM Corporation into one location.

Total sales of capacitors by STM increased in the first eight months of 1976, following the consolidation, compared to sales in the first eight months of 1975, when STM was operating three plants.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with aluminum electrolytic fixed capacitors produced by the Hicksville, Ohio facility of STM Corporation did not contribute importantly to a decline in sales or production or to the separation of workers at that facility.

Signed at Washington, D.C. this 9th day of December 1976.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.76-37328 Filed 12-20-76;8:45 am]

[TA-W-1,338]

STOCKHAM VALVES & FITTINGS, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Stockham Valves & Fittings, Inc., Birmingham, Alabama (TA-W-1,338). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with iron and steel industrial valves and pipe fittings produced by Stockham Valves & Fittings, Inc. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation still further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37329 Filed 12-20-76;8:45 am]

[TA-W-1,343]

U-BRAND CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of the Vernon, California plant of U-Brand Corporation, Ashland, Ohio (TA-W-1,343). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the storing of iron pipe fittings for the U-Brand Corporation's Ashland, Ohio plant provided by U-Brand Corp. or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of

the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37330 Filed 12-20-76;8:45 am]

[TA-W-1,308]

WARNER GEAR CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 29, 1976, the Department of Labor received a petition dated October 29, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Automobile, Aerospace & Agriculture Implement Workers of America on behalf of the workers and former workers of Warner Gear Corporation, Muncie, Indiana (TA-W-1,308). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with the secretarial services provided by Warner Gear Corporation or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 29th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37331 Filed 12-20-76;8:45 am]

[TA-W-1,347]

WHEELING MACHINE PRODUCTS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976, the Department of Labor received a petition dated November 1, 1976, which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Wheeling Machine Products Company, Wheeling, West Virginia (TA-W-1,347). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with steel couplings produced by Wheeling Machine Products Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuan tto 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37332 Filed 12-20-76;8:45 am]

[TA-W-1,317]

WILLIAM POWELL CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 30, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of William Powell Company, Cincinnati, Ohio (TA-W-1,317). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with stainless steel, carbon steel, bronze & iron valves produced by William Powell Company or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37333 Filed 12-20-76;8:45 am]

[TA-W-1,350]

ZURN INDUSTRIES

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 1, 1976 the Department of Labor received a petition dated November 1, 1976 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of Zurn Industries, Hydromechanics Division, Erie, Pennsylvania (TA-W-1,350). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in Section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with plumbing fixture and components produced by Zurn Industries or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision. The investigation will further related, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 31, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 1st day of December 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-37334 Filed 12-20-76;8:45 am]

[TA-W-1134]

BAGATELLE HANDBAG CO. AND CAPRICE HANDBAG CO., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1134: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 30, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers manufacturing, marketing and selling women's handbags at the New York, New York plant of Caprice and Bagatelle Handbag Companies.

The notice of investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47617). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Caprice and Bagatelle Handbag Companies, Caprice's customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met by workers of Bagatelle and Caprice Handbag Companies.

The Bagatelle Handbag Company produces handbags and the sole function of the Caprice Handbag Company is to market and sell the handbags produced by Bagatelle. Caprice only sells handbags manufactured by Bagatelle.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers at Bagatelle Handbag decreased 5.1 percent from 1973 to 1974, increased 10.8 percent from 1974 to 1975 and decreased 11.1 percent for the first ten months of 1976 compared to the first ten months of 1975. Employment of sales personnel at Caprice Handbag Company declined 12 percent from 1974 to 1975 and declined 14 percent in the first 10 months of 1976 compared to the same period in 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales in value by Caprice Handbag Company decreased 7.9 percent from 1973 to 1974 and increased 27.7 percent from 1974 to 1975. Sales in value decreased 8.7 percent in the first ten months of 1976 compared to the first ten months of 1975.

Production in quantity by Bagatelle Handbag Company decreased 25.6 percent from 1973 to 1974, 7.5 percent from 1974 to 1975 and 3.7 percent for the first ten months of 1976 compared to the first ten months of 1975.

INCREASED IMPORTS

Imports of handbags increased absolutely from 1971 to 1972, decreased absolutely from 1972 to 1973 and from 1973 to 1974 before increasing to 57.9 million units in 1975 from 54.4 million units in 1974. For the first ten months of 1976 imports increased 66.7 percent compared to the first ten months of 1975 as they rose from 41.1 million units to 68.5 million units.

CONTRIBUTED IMPORTANTLY

A representative sample of Caprice Handbag Company's customers, indicated that they had increased their purchases of imported handbags such as those manufactured by Bagatelle, while decreasing their purchase from Caprice Handbag Company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's handbags

manufactured by Bagatelle Handbag Company and sold by Caprice Handbag Company, New York, New York contributed importantly to the total or partial separations of the workers of those companies. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production, marketing and selling of women's handbags at the New York, New York plant of Bagatelle Handbag Company and Caprice Handbag Company who became totally or partially separated from employment on or after September 15, 1975 are certified eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of December 1976.

GLORIA G. PRATT,
Director, Office of Foreign Economic Policy.

[FR Doc.76-37473 Filed 12-20-76;8:45 am]

[TA-W-1146]

FAMOUS MAID BRASSIERE CORP., BROOKLYN, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1146; investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 7, 1976 in response to a worker petition received on October 7, 1976 which was filed on behalf of workers and former workers producing brassieres at the Brooklyn, New York plant of Famous Maid Brassiere Corporation.

The notice of investigation was published in the FEDERAL REGISTER on October 29, 1976 (41 FR 47622). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Famous Maid Brassiere Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average employment of production workers at the plant declined 5.7 percent in the first three quarters of 1976 compared to the same period in 1975.

SALES OR PRODUCTION, OR BOTH HAVE DECREASED ABSOLUTELY

Company sales of brassieres declined 8.7 percent in the first three quarters of 1976 compared to the same period in 1975.

INCREASED IMPORTS

Imports of Brassieres, Bra-lettes and Bandaux increased each year, from 4.995 million dozens in 1971, to 6.921 million dozens in 1975 and increased from 4.988 million dozens in the first three quarters of 1975, to 6.405 million dozens in the same period of 1976.

Imports of brassieres by the company increased 4.4 percent in the first three quarters of 1976 compared to the same period in 1975.

CONTRIBUTED IMPORTANTLY

A representative sample of Famous Maid's major customers in 1975 and 1976 indicated that several of these customers have increased imports of brassieres, while decreasing their purchases from Famous Maid.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with brassieres produced at the Brooklyn, New York plant of Famous Maid Brassiere Corporation, contributed importantly to the total or partial separation of the workers engaged in the production of such brassieres at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Brooklyn, New York plant of Famous Maid Brassiere Corporation, who became totally or partially separated from employment on or after January 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of December 1976.

GLORIA G. PRATT,
Director, Office of Foreign Economic Policy.

[FR Doc.76-37474 Filed 12-20-76;8:45 am]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

Meeting

Pursuant to Section 512 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1142) a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:00 a.m. on Tuesday, January 11, 1977, in the Federal Ballroom North, Quality Inn—Capitol Hill, 415 New Jersey Avenue, N.W., Washington, D.C.

The meeting will be open to the public. The purpose of the meeting is to discuss the items listed in the following agenda:

1. Administration of oath to new member.
2. Schedule of advisory council meetings for 1977.
3. Election of advisory council coordinator.
4. Advisory council recommendations—status report.
5. Department of Labor progress report since last advisory council meeting.
6. Investment work group position paper—responsibilities and potential liabilities of fiduciaries and co-fiduciaries employed by employee benefit plans.
7. Small plans impact work group report.
8. Legislative amendments.
9. Minimum standards work group.

Any member of the public may file a written statement concerning the topics under this agenda by submitting 30 copies on or before the close of business Monday, January 10, 1977, to William J. Chadwick, Administrator of Pension and Welfare Benefit Programs, New Department of Labor Building, Third Street and Constitution Avenue, N.W., Room N4629, Washington, D.C., 20216.

Persons desiring to attend should notify Mr. Edward F. Lysczek, Executive Secretary of the Advisory Council, New Department of Labor Building, Third Street and Constitution Avenue, N.W., Room N4629, Washington, D.C., 20216, or may call Area Code 202-523-8753.

Signed at Washington, D.C. This 17th day of December 1976.

WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs.

[FR Doc.76-37590 Filed 12-17-76;3:12 pm]

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

MEETING

Notice is hereby given, pursuant to the Federal Advisory Committee Act, P.L. 92-463, that a meeting of the National Advisory Council on Extension and Continuing Education will be held on January 9, 1977, at the Xerox Center for Training and Management Development in Leesburg, Virginia, and again on Tuesday, January 11, and Wednesday, January 12.

The meeting on January 9 will begin at 7:30 p.m. and end no later than 9:00 p.m. The agenda will consist of the swearing in of new members to the Council and a final planning session by the Council for its Invitational Conference on Continuing Education, Manpower Policy, and Lifelong Learning, which will take place at the Xerox Center on Monday and Tuesday morning, January 10 and 11.

The Council will meet again at the conclusion of the conference, beginning at about 3:00 p.m. on January 10 until 5:30 p.m.; and on Wednesday morning, from 9:00 a.m. to noon. The agenda for these sessions of the Council will include meetings of the standing committees of the Council; discussion of recommendations to be submitted by the Council to the President and Congress on March 31, 1977; and discussion of the annual report.

The National Advisory Council on Extension and Continuing Education is authorized under Public Law 89–329. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report annually to the President on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Council is open to the public. Anyone wishing to attend should inform the Council office no later than January 4, by calling (202) 376–8888. The Conference is by invitation only. Anyone wishing information or reports of the Conference or the Council meeting should send requests to the Council office at 425 Thirteenth Street, N.W., Suite 529, Washington, D.C. 20004.

Dated: December 13, 1976.

JAMES A. TURMAN,
Executive Director.

[FR Doc.76–37454 Filed 12–20–76;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ADVISORY COMMITTEE EDUCATION PANEL

Meeting

DECEMBER 10, 1976.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463) notice is hereby given that a meeting of the Education Panel will convene at 9:00 a.m. each day in Room 1023 at 806 Fifteenth Street N.W., Washington, D.C., on January 13–14, 1977.

The purpose of the meeting is to review Pilot applications submitted to the National Endowment for the Humanities for grants to educational institutions and non-profit organizations.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John Jordan, 806 Fifteenth Street N.W., Washington, D.C. 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.76–37344 Filed 12–20–76;8:45 am]

NATIONAL SCIENCE FOUNDATION

SCIENCE INFORMATION ACTIVITIES TASK FORCE

Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

SCIENCE INFORMATION ACTIVITIES TASK FORCE

Date: January 13 and 14, 1977. Time: 9:00 am thru 4:00 pm, both days. Place: Room 543, National Science Foundation, 1800 G Street, NW, Washington, DC 20550. Type of Meeting: Open. Contact: Mr. Robert S. Cutler, Executive Officer (DFO), Science Information Activities Task Force, Room 1201, National Science Foundation, Washington, DC, 20550, telephone: (202) 632–5826. Persons planning to attend should notify Mr. Cutler prior to the meeting.

Summary Minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, DC 20550.

Purpose of Task Force: To provide advice and recommendations concerning the appropriate roes and responsibilities of the National Science Foundation regarding the communication and use of scientific and technical information.

JANUARY 13, 1977

9:00	Welcome by Acting Director, NSF.
9:10	Introductory Remarks on Science Information and the Foundation's Scientific Technological and International Activities, Acting Assistant Director, Scientific, Technological and International Affairs.
9:20	Introductory Remarks on Task Force Charter, Tentative Work Plans, Organization, and Schedule, Chairman.
9:45	Discussion, Chairman.
10:45	Coffee Break.
11:00	Further Discussion on Task Force Charter, Schedule, and Organization, Chairman.
Noon	Recess.
1:30	Overview of NSF Science Information Activities, Division Director, Division of Science Information.
2:45	Coffee Break.
3:00	Open Public Participation, Chairman.
4:00	Adjourn.

JANUARY 14, 1977

9:00	Summary of Discussion from January 13, Chairman.
9:30	Identification of Initial Issues, Priorities, and Approach for the Task Force, Chairman.
10:45	Coffee Break.
11:00	Discussion, Chairman.
Noon	Recess.
1:30	Discussion of Requirements, Resources and Schedules, Chairman.
2:45	Coffee Break.
3:00	Tentative Agenda for Second Task Force Meeting, Chairman.
4:00	Adjourn.

M. REBECCA WINKLER,
Acting Committee Management Officer.

DECEMBER 13, 1976.

[FR Doc.76–37452 Filed 12–20–76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 15, 1976 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202–395–4529), or from the reviewer listed.

NEW FORMS

U.S. CIVIL SERVICE COMMISSION

Occupational Health Reporter Readership Survey, single time, professionals in the field of occupational health, Caywood, D. P., 395–3443.

DEPARTMENT OF COMMERCE

Bureau of Census, 1977 National Travel Survey, NTS 1–7, other (see SF–831), national sample of persons in households, Strasser, A., 395–5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, positive beam limitation—effectiveness evaluation, FD–2969, single time, X-ray equipment operators, Warren Topelius, 395–5872.

Alcohol, Drug Abuse and Mental Health Administration, Treatment Outcome Prospective Study (TOPS), other (see SF–83) clients in federally funded drug abuse treatment programs, Richard Eisenger, 395–6140.

Social Security Administration, Disability Report and Vocational Report, SSA-3368, SSA-3369, on occasion, worker filing on his own behalf and in SSI disability claims, Caywood, D. P., 395-3443.

REVISIONS

VETERANS ADMINISTRATION

Application for change of permanent plan (medical), 29-1549, on occasion, insured veteran, Caywood, D. P., 395-3443.

ENVIRONMENTAL PROTECTION AGENCY

Health Questionnaire Survey, single time, Households within 1 mile radius of sewage treatment plan, Ellett, C. A., Richard Eisenger, 395-5867.

TENNESSEE VALLEY AUTHORITY

U.S. Fertilizer Port Study, single time, ports handling export or import of fertilizers, Lowry, R. L., 395-3772.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Farm Production Expenditure Survey, annually, sample of farmers, Hulett, D. T., 395-4730.

Animal and Plant Health Inspection Service, record of animals on hand (other than dogs and cats), VS 18-19 other (see SF-831, animal dealers, Tracey Cole, 395-5870.

Extension Service, Evaluation of Food and Nutrition Education Program, ES-255, ES-256, semi-annually, selected sample of participant in EFNEP, C. Louis Kincannon, 395-3211.

Agricultural Marketing Service, warehouseman's statement, TW 308, on occasion, grain elevators, Marsha Traynham, 395-4529.

DEPARTMENT OF DEFENSE

Defense Civil Preparedness Agency, DCPA Program Status Report, semi-annually, State Civil Preparedness Offices, Warren Topelius, 395-5872.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration, Social Issues (for nationwide drug abuse survey), NIDA 0820, single time, individuals in households, Richard Eisinger, 395-6140.

Public Health Service, Health Services Funding Financial Plan Summary Sheet, annually, PHS grantees, Lowry, R. L., Budget Review Division, 395-3772.

Health Resources Administration, Clinic Visit Record for Family Planning Services, IBM H97934, on occasion, sample of family planning service sites, Richard Eisinger, 395-6140.

Health Services Administration, Testing of a Curriculum for Natural Family Planning, single time, instructors, counselors, college students, Richard Eisinger, 395-6140.

DEPARTMENT OF THE INTERIOR

Departmental and Other Ecological Impact of Small Structures on the Coastal Environment, single time, government and university institutions, Ellett, C. A., 395-5867.

DEPARTMENT OF THE TREASURY

Departmental and other:

Long-term liabilities to, and claims on, foreigners, B-3, monthly, banks, Hulett, D. T., 395-4730.

Short-term Liabilities to Foreigners, B-1, B-1(supp) monthly, banks, Hulett, D. T., 395-4730.

Liabilities to, and Claims on, Foreigners, C-1/2, quarterly, nonbanking business concerns, Hulett, D. T., 395-4730.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration, assessment of Vehicle Safety Problems for Special Driving Populations, single time, handicapped and elderly drivers, Strasser, A., 395-5867.

48-R0092, Departmental and other Short-Term Claims on Foreigners, B-2, Monthly, Banks, Hulett, D. T., 395-4730.

EXTENSIONS

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cash Request and Fiscal Report Form, NEA-7, on occasion, charitable and educational institutions, Tracey Cole, 395-5870.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration, Uniform System of Accounts Prescribed for Rural Electric Utilities, financed by REA, REA 181-1, on occasion, REA electric borrowers, Caywood, D. P., 395-3443.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration, Check List for Review of Plans and Specifications (telephone), REA 553, on occasion, consulting engineers of REA telephone borrowers, Tracey Cole, 395-5870.

DEPARTMENT OF COMMERCE

Bureau of Census, National Longitudinal Study Residual Sample, Address Maintenance Survey, Address Correction Forms PMS-20, PMS-21, single time, national sample of scientists, Strasser, A., George Hall, 395-5867.

Bureau of Economic Analysis:

Plant and Equipment Expenditures Survey, BE-452, quarterly, manufacturing and utilities, Laverne V. Collins, 395-5867.

Plant and Equipment Expenditures Survey (Expansion Industries), BE-456, quarterly, medical, legal, educational and religious social service organization, Laverne V. Collins, 395-5867.

Plant and Equipment Expenditures Survey Annual Supplement, (Facturers Only), BE-452A, annually, manufacturing and utilities, Laverne V. Collins, 395-5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration, The Conference of Radiation Control Programs, Directors Nationwide Evaluation of X-Ray Trends, Survey Form, FD 2578, FDA0909, on occasion owners and operators of X-ray equipment, Caywood, D. P., 395-3443.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76-37584 Filed 12-20-76;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 10, 1976 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

ENVIRONMENTAL PROTECTION AGENCY

Data requirements for the Gemlup II study, Single time, Regional planning agencies, Ellett, C. A., 395-5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, Study of incidence, prevalence, economic impact of stroke, Single time, persons with diagnosis of stroke or close relatives, Richard Eisinger, 395-6140.

REVISIONS

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service:

Application for registration, VS 18-11, on occasion, research facilities, Warren Topelius, 395-5872.

Inspection of animal dealers premises, research facilities, and holding facilities, VS 18-8, monthly, animal dealers and research facilities, Lowry, R. L., 395-3772.

Record of dogs and cats on hand, VS 18-5, other (see SF-83), dealers and research facilities, Tracey Cole, 395-5870.

DEPARTMENT OF COMMERCE

Bureau of Census, survey of housing starts, sales and completions, SOC 900AX, monthly, builders of residential construction, Sunderhauf, M. B., 395-6140.

EXTENSIONS

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Artists-in-schools program/dance component; 1977-78 school year—guidelines for dance, movement specialists, annually, dance movement specialist, Marsha Traynham, 395-4529.

ENVIRONMENTAL PROTECTION AGENCY

Discharge monitoring report, on occasion, NPDES permittees discharging pollutants to waters of U.S., Marsha Traynham, 395-4529.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administration (Office of Assistant Secretary):

Termite soil treatment guarantee, FHA 2052, on occasion, registered surveyors, Housing, Veterans and Labor Division, 395-3532.

Borrower's statement regarding its financial condition, HUD 4302, on occasion, educational institutions, Housing, Veterans and Labor Division, 395-3532.

Calculation of net amount due for bond purchase, HUD 4301, on occasion, educational institutions, Housing, Veterans and Labor Division, 395-3532.

Requisition for Government advance, HUD 4300-A, on occasion, educational institutions, Housing, Veterans and Labor Division, 395-3532.

Requisition and voucher for bond payment or advance, HUD 4300, on occasion, educational institutions, Housing, Veterans and Labor Division, 395–3532.

DEPARTMENT OF LABOR

Bureau of International Labor Affairs, application for a special individual rate, WH–249, annually, sheltered workshops, Strasser, A., 395–5867.

DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Basic rules of the defense materials and priority systems between Canada and U.S., DMS–1, on occasion, Marsha Traynham, 395–4529.

FOOD AND NUTRITION SERVICE

Certification of household transfer (food stamp program), FNS–286, on occasion, Housing, Veterans and Labor Division, 395–3532.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration:

Franchising in the economy, 1974–1976, DIB–910, annually, franchisors, Marsha Traynham, 395–4529.

Franchisor participation agreement for franchise company data book, DIB 908, annually, franchisors, Marsha Traynham, 395–4529.

DEPARTMENT OF DEFENSE

Departmental and other application for correction of military or naval record, DD 149, on occasion, individuals requesting change in military records, Caywood, D. P., 395–3443.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administration (Office of Assistant Secretary), certificate of financial settlement, HUD 6282, annually, loc. pub. agencies w/ Neigh. development progr. being closed, Housing, Veterans and Labor Division, 395–3532.

DEPARTMENT OF LABOR

Bureau of International Labor Affairs:

Application for a certificate for a training or evaluation, WH–247, annually, sheltered workshops, Strasser, A., 395–5867.

Initial application for sheltered workshop certificate, WH–373, on occasion, sheltered workshops, Strasser, A., 395–5867.

Application for sheltered workshop certificate, WH–226, on occasion, sheltered workshops, Strasser, A., 395–5867.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.76–37585 Filed 12–20–76;8:45 am]

PRIVACY ACT OF 1974

Reports On New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period November 29, through December 10, 1976 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

System Names:

(1) Epidemiology Studies, National Institute of Environmental Health Sciences.

(2) Medical Health Surveillance of Grain Handlers.

Report Date:

November 24, 1976.

Point of Contact:

John Ottina, Assistant Secretary for Administration and Management, Department of Health, Education, and Welfare, Washington, D.C. 20201.

UNITED STATES INFORMATION AGENCY

System Name:

Director's Secretariat Staff Files.

Report Date:

December 2, 1976.

Point of Contact:

Mr. Alan Carter, Assistant Director (Public Information), U.S. Information Agency, Washington, D.C. 20547.

FEDERAL ELECTION COMMISSION

System Names:

(1) Requests for opinions and response.

(2) Compliance actions.

(3) Public information mailing list.

(4) Personnel and travel.

(5) Candidate reports and designations.

(6) Payroll records.

Report Date:

December 3, 1976.

Point of Contact:

Daniel Swillinger, Assistant General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

System Name:

ERDA Headquarters Online Travel System.

Report Date:

December 2, 1976.

Point of Contact:

Walter A. Kee, Energy Research and Development Administration, Washington, D.C. 20545.

VELMA N. BALDWIN,
Assistant to the Director for Administration.

[FR Doc.76–37453 Filed 12–20–76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 193]

QUESTIONS RAISED IN ACCOUNTING SERIES

Meeting

The Securities and Exchange Commission today announced that it will hold a public meeting to explore certain questions which relate to a Petition filed by the public accounting firm of Arthur Andersen & Co. on June 15, 1976. In accounting Series Release No. 193 [41 FR 32810 and 34374] the Commission described the Andersen Petition and solicited public comment on three questions which the Commission believed were raised by the Andersen Petition. Those questions were:

1. Should the Commission continue its policy of recognizing the pronouncements of the Financial Accounting Standards Board as providing a frame of reference for publicly held companies to satisfy their statutory disclosure obligations?

2. Should the Commission further define the phrase "substantial authoritative support?"

3. Should the Commission further define the phrase "accounting principles and practices" used in Rule 2–02(c) of Regulation S–X [17 CFR 210.2–02(c)]?

The meeting will be held in Room 776 of the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. at 2:30 p.m. on January 3, 1977. The format for the meeting will involve a roundtable discussion among the Commission and certain invited persons who are knowledgeable in the area. Because of the importance of the questions raised by the Andersen Petition, the Commission is holding this meeting to supplement the public comment received in response to its request for comment in ASR 193. The following persons have accepted the Commission's invitation to participate in this meeting:

Marshall S. Armstong	Ralph E. Kent
John C. Biegler	Herbert C. Knortz
Manuel F. Cohen	Theodore R. Lilley
Sidney Davidson	Archibald E. MacKay
Charles C. Hornbostel	Wallace E. Olson
John W. Ingraham	Lewis Young

The meeting will be open to the public.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 15, 1976.

[FR Doc.76–37427 Filed 12–20–76;8:45 am]

SMALL BUSINESS ADMINISTRATION

BOSTON DISTRICT ADVISORY COUNCIL

Meeting

The Small Business Administration Boston District Advisory Council will hold a public meeting at 10:00 a.m. Fri-

day, January 28, 1977, in the Mandarin Room of the Sheraton Lincoln Motor Inn, Worcester, Massachusetts, 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 Dr. A. J. Prendergast, 150 Causeway Street, Boston, Massachusetts 02114, (617) 223-4074.

Dated: December 13, 1976.

HENRY V.Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.76-37458 Filed 12-20-76;8:45 am]

[License No. 02/02-0321]

IRVING SMALL BUSINESS INVESTMENT CO., INC.

Issuance of a License To Operate as a Small Business Investment Company

On November 9, 1976, a notice was published in the FEDERAL REGISTER (40 FR 49559) stating that Irving Small Business Investment Company, Inc., One Wall Street, New York, New York 10005, had filed an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Rules and Regulations governing small business investment companies (13 CFR 107.102 (1976)) for a license to operate as a small business investment company (SBIC).

Interested parties were given to the close of business November 24, 1976, to submit their written comments. None were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on December 6, 1976, issued License No. 02/02-0321 to Irving Small Business Investment Company, Inc., pursuant to Section 301 (c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: December 9, 1976.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.76-37456 Filed 12-20-76;8:45 am]

[Proposed License No. 02/02-0324]

PIONEER INVESTORS CORP.

Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a Small Business Investment Company under the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et. seq.) has been filed by Pioneer Investors Corp. (the Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102.

The applicant, with its principal place of business at One Battery Park Plaza, New York, New York 10004, will begin operations with $2,510,000 paid-in capital and surplus.

The officers and directors of the applicant will be as follows:

Name	*Title*
Neil A. McConnell, 12 Sutton Square, New York, N.Y.	Chairman of the board and director.
James G. Niven, 160 East 72nd Street, New York, N.Y. 10021.	President, treasurer and director.
Sharon J. Gabriel, 20-06 Seagirt Blvd., Far Rockaway, N.Y. 11691.	Assistant secretary.
Niven Management Corp., 160 East 72nd Street, New York, N.Y. 10021.	Investment advisor — owned 100 percent by Mr. James G. Niven.

Mr. Neil A. McConnell will be the sole beneficial owner of the applicant's common stock. He also owns all of the common stock and Mr. Niven is a director of Pioneer Capital Corporation, 1440 Broadway, Room 1967, New York, New York 10018, a Section 301(d) small business investment company, License No. 02/02-5274.

The applicant will conduct its operations principally in the State of New York. The applicant expects to be equity rather than collateral oriented in its investment decisions with particular attention to investments with growth potential.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Any person may, on or before January 5, 1977, submit to SBA written comments on the proposed License. Any such communications should be addressed to the Deputy Associate Administrator for Investment, 1441 "L" Street, N.W. Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Date: December 9, 1976.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.76-37457 Filed 12-20-76;8:45 am]

DEPARTMENT OF STATE

[CM-7/5]

STUDY GROUP 5 OF THE U.S. NATIONAL COMMITTEE OF THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 5 of the U.S. CCITT National Committee will meet on January 13, 1977, at 10:30 a.m. in Room 5611 of the Department of Commerce, 14th Street, N.W., (between E and Constitution Avenue), Washington, D.C. This Study Group deals with matters in telecommunications relating to the development of the international digital date transmission services.

The agenda for the January 13 meeting will include consideration of the following:

1. Final review of proposed contributions to the next meeting of CCITT Study Groups VII and XVII;

2. Other business.

Members of the general public who desire to attend the meeting on January 13 will be admitted up to the limit of the meeting room.

GORDON L. HUFFCUTT,
Acting Director, Office of International Communications Policy.

DECEMBER 13, 1976.

[FR Doc.76-37459 Filed 12-20-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

INTERSTATE RESURFACING, RESTORATION AND REHABILITATION STUDY

Extension of Comment Period

This notice extends the period for comments to the Notice published November 8, 1976 (41 FR 49208 and 49209), on the need to provide Federal financial assistance for resurfacing, restoration, and rehabilitation of routes on the Interstate Highway System. Additional time is needed for all interested parties to comment. Accordingly, the comment period is extended through January 14, 1977.

Issued on: December 14, 1976.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.76-37460 Filed 12-20-76;8:45 am]

Federal Railroad Administration

[FRA Waiver Petition Number PB-76-2]

DULUTH, WINNIPEG AND PACIFIC RAILWAY CO.

Petition for Waiver of Power Brake Requirements

Notice is hereby given that the Duluth, Winnipeg and Pacific Railway Company (DW&P) has petitioned the Federal Railroad Administration for a permanent waiver of compliance with the air brake testing requirements of 49 CFR 232.19. The permanent waiver being requested by DW&P would be applicable only to run-through trains that operate directly between Symington Yard in Winnipeg, Canada and Duluth, Minnesota.

The current provision of the regulation, in general terms, defines a "run-through train" as one which passes from one carrier to another with no change in the equipment which comprises that train (49 CFR 19(a)(1). Specific inspection and testing of the air brake systems are applicable to the operation of each

"run-through train" (49 CFR 232.19 (c)). A carrier that is operating a "run-through train" (49 CFR 232.19 (c)). A carrier that is operating a "run-through train" is not allowed to change the locomotive or locomotives of that train at the point of interchange unless the train is given an initial terminal air brake test at that precise location.

DW&P, in its run-through train operation between Winnipeg, Canada and Duluth, Minnesota, currently changes the locomotive consist used to haul this train at a location known as Fort Francis, Canada. The change in locomotives involves the addition of one locomotive unit to trains destined for Duluth, Minnesota and the removal of one locomotive unit from trains destined for Winnipeg, Canada. DW&P currently performs the required initial terminal air brake test at Fort Francis, Canada when the locomotive consist is altered.

DW&P operational changes will eliminate this locomotive consist change at Fort Francis, Canada. DW&P proposes, to make this locomotive consist change at Rainer, Minnesota. DW&P seeks relief from the requirement that an initial terminal air brake test be performed at Rainer, Minnesota. At the time the locomotive consist is changed, DW&P requests permission to utilize the intermediate terminal air brake test prescribed by the regulation (49 CFR 232.12(c)–(j)) in lieu of the initial terminal air brake test.

DW&P indicates that, in its view, safety will not be impaired by this proposed method of operation and that it will not change the controlling unit when the locomotive consist is altered. DW&P also indicates that significant savings will be realized if the requested waiver is granted and this method of operation is utilized.

DW&P states in the petition that it has explored several alternatives prior to requesting this waiver of compliance. These alternatives included adding the locomotive unit at Symington, Canada and isolating the unit until it was needed and selecting a site between Rainer, Minnesota, and Duluth, Minnesota where the locomotive consist change could be made in conformity with the current regulatory provisions. These alternatives are not feasible in the judgement of the DW&P and, therefore, DW&P has requested this waiver which will permit DW&P to achieve significant savings in fuel and operating expenses without reducing the safety of the operation.

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. FRA does not anticipate scheduling an opportunity for oral comment on this petition since the facts do not appear to warrant it. An opportunity to present oral comments will be provided however, if requested by any interested party prior to December 24, 1976. All communication concerning this petition should identify the appropriate Docket Number (FRA Waiver Petition Docket Number PB–76–2) and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before January 10, 1977 will be considered by the Federal Railroad Administration before final action is taken. Comments received after that date will be considered so far as practicable. All comments received will be available, both before and after the closing date for communications, for examination by interested persons during regular business hours in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

This notice is issued under the authority of 45 USC 9; 49 USC 1655(e); and section 1.49(n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(n).

Issued in Washington, D.C. on December 14, 1976.

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

[FR Doc.76-37389 Filed 12-20-76;8:45 am]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 76-13]

ADVISORY COMMITTEE ON DISTILLED SPIRITS PLANT SUPERVISION

Meeting

A meeting of the Advisory Committee on Distilled Spirits Plan Supervision will be held on January 12 and 13, 1977, in Room 5041, 1200 Pennsylvania Avenue, NW., Washington, DC. The meeting will begin at 10:00 a.m. on January 12, and at 9:30 a.m. on January 13.

The Committee will first receive and discuss reports from members on the findings of industry surveys of the feasibility of the Bureau's plan for a phased withdrawal of government officers presently assigned to distilled spirits plants. The Committee will then formulate its recommendations to the Director (a) as to the desirability of changing the present form of supervision of distilled spirits plants, and (b) as to the method of overcoming or minimizing problems anticipated in the transition if a change should be considered feasible.

The meeting will be open to the public. Anyone wishing to speak before the Committee should include, in a written request, a statement of the purpose of the presentation, the subject matter to be covered, and the amount of time needed.

Written material for the Committee's consideration and requests to appear before the Committee should be sent to the Manager, Advisory Committee on Distilled Spirits Plant Supervision, Room 6233, Bureau of Alcohol, Tobacco and Firearms, Washington, DC. 20226.

Dated December 16, 1976.

REX D. DAVIS,
Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc.76-37463 Filed 12-20-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 216]

ASSIGNMENT OF HEARINGS

DECEMBER 16, 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.

MC 128663 (Sub 2), Metals Transport, Inc. now being assigned March 8, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

FF 486, Gulf Forwarding, Inc. now being assigned March 15, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 125533 (Sub 15), George W. Kugler, Inc. now being assigned March 16, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 103066 Sub 42, Stone Trucking Company, now being assigned February 24, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC-F 12898, Gorski Bulk Transport, Inc.—Purchase—Thaddeus A. Gorski, Dba Gorski Bulk Transport, Continental Transport, Inc., and MC 142268 Sub 1, Gorski Bulk Transport, Inc., now being assigned March 1, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 103066 Sub 37, Stone Trucking Company, now being assigned February 9, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 103066 Sub 48, Stone Trucking Company, now being assigned March 10, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 103066 Sub 45, Stone Trucking Company, now being assigned March 24, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 107295 (Sub-824), Pre-Fab Transit Co., now being assigned February 7, 1977 (1 day), at Memphis, Tennessee; in a hearing room to be later designated.

MC 139193 (Sub-40), Roberts & Oake, Inc., now being assigned February 8, 1977 (1 day), at Memphis, Tennessee; in a hearing room to be later designated.

MC 140800 (Sub-1), Colonial Transportation, Inc., now being assigned February 9, 1977 (1 day), at Memphis, Tennessee, in a hearing room to be later designated.

MC 115654 (Sub-55), Tennessee Cartage Company, Inc., now being assigned February 10, 1977 (2 days), at Memphis, Tennessee; in a hearing room to be later designated.

AB-21, Abilene & Southern Railway Company Abandonment Between Abilene & Winters in Taylor & Runnels Counties, Texas and FD-27929, Texas & Pacific Railway Company—Acquistion & operation—A Line of Railroad at Abilene, Taylor County, Texas, now being assigned continued hearing February 14, 1977 (2 days), at Winters, Texas; in a hearing room to be later desighated.

MC 124947 (Sub-47), Machinery Transports, Inc., now being assigned February 16, 1977 (1 day), at Dallas, Texas; in a hearing room to be later designated.

MC 83835 (Sub-134), Wales Transportation, Inc., now being assigned February 17, 1977 (2 days), at Dallas, Texas; in a hearing room to be later designated.

MC 129032 (Sub-No. 21), Tom Inman Trucking, Inc., now assigned January 17, 1977, at Seattle, Wash., is canceled and reassigned for January 17, 1977, at Portland, Oreg. Room 103, Pioneer Courthouse, 555 Yamhill Street.

MC 66571 (Sub-No. 7), Red Line, Inc., now assigned January 24, 1977, at Washington, D.C. is canceled and reassigned for hearing on January 24, 1977 (1 week), at Roanoke, Va.; in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37476 Filed 12-20-76;8:45 am]

[Notice No. 217]

ASSIGNMENT OF HEARINGS

DECEMBER 16, 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 142012, Osborne West Limited now assigned January 17, 1977 at San Francisco, California, Room 510, 5th Floor, 211 Main Street instead of 210 Main Street.

MC 134068 (Sub 28), Kodiak Refrigerated Lines, Inc., now assigned January 13, 1977 at San Francisco, California and will be held in Room 510, 5th Floor, 211 Main Street instead of 210 Main Street.

MC 113855 (Sub 357), International Transport, Inc. now assigned January 12, 1977 at San Francisco, California and will be held in Room 510, 5th Floor, 211 Main Street instead of 210 Main Street.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37477 Filed 12-20-76;8:45 am]

[Notice No. 91]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

DECEMBER 21, 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 January 10, 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-75682. By order of December 7, 1976 the Motor Carrier Board, on reconsideration, approved the transfer to Me Transport Co., Inc., Binghamton, N.Y., of the operating rights in Certificate No. MC 140695 issued November 3, 1976, to Edward T. Walsh, doing business as Walsh Carriage, Johnson City, N.Y., authorizing the transportation of canned food products, from Johnson City and Binghamton, N.Y., to points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the Western boundary of Itasca County, Minn., thence northward along the western boundaries of Itasca and Koochiching Counties, Minn., to the United States Canadian Boundary Line, restricted against the transportation of shipments to points in Florida and New York (except points in Putnam, Westchester, Nassau, and Suffolk Counties, N.Y., and New York, N.Y. and to points in Missouri; Arkansas, Minnesota, and Louisiana; and foodstuffs, not frozen (except in bulk), used in the manufacture of food products, frozen meats, in boxes, and returned canned food products, and cartons, labels and empty cans, from the above-named destination points except Missouri, Arkansas, Minnesota, and Louisiana, to Johnson City and Binghamton, N.Y., restricted against the transportation of shipments from points in Florida (except Jacksonville), and Madison and Cudahy, Wis., to Johnson City and Binghamton, N.Y.; such merchandise as it dealt in by wholesale and retail food business houses (except in bulk), from points in Maryland, Maine, and Massachusetts, to Binghamton, N.Y.; and foodstuffs, not frozen (except in bulk), used in the manufacture of food products, and cartons, labels, and empty cans, from Providence, R.I., and points in Connecticut, Delaware, New Jersey, Pennsylvania, Virginia, and Georgia, to Binghamton, N.Y. Herbert M. Canter, 315 Seitz Building, 201 East Jefferson Street, Syracuse, N.Y. 13202 Attorney for transferee. Donald C. Carmien, 50–61 Court Street, Binghamton, N.Y. 13901 Attorney for transferor.

No. MC 76075 By order entered December 7, 1976 the Motor Carrier Board approved the transfer to Fleming-Babcock, Inc., Platte City, Mo. of the operating rights set forth in Certificate No. MC 117124, issued September 6, 1972, to A & J Trucking Corporation, Forest City, Mo., authorizing the transportation of sand, gravel, dirt, and rock between points in North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri, Tom B. Kretsinger, Esq., Suite 910 Fairfax Bldg., 101 W. 11th St., Kansas City, Mo. 64105.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37478 Filed 12-20-76;8:45 am]

JOEL E. BURNS AND LEWIS R. TEEPLE

Delegation of Authority

In the matter of specification of type of rerouting cases in respect of which determinations may be made by Joel E. Burns and/or Lewis R. Teeple, Agents.

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 10th day of December, 1976.

It appearing, That Item 4.4(z) of the Organization Minutes of the Commission, 36 F.R. 6468, April 3, 1971, assigns to Division 3 the responsibilities pertaining to the use by the National Railroad Passenger Corporation (AMTRAK) of the tracks and other facilities of other railroads, including the power to deal with emergency requirements, as set forth in section 402(c) of the Rail Passenger Service Act of 1970, 45 U.S.C. § 562(c); and

It further appearing, That the exigencies of the situation may be such as to require determination and action by a single official and preclude the convening of the Division to receive and act on the application of AMTRAK, and good cause appearing therefor:

It is ordered, That Joel E. Burns and/or Lewis R. Teeple, Agents, shall be delegated authority to make the determination as to whether an emergency requiring such action exists and to require a railroad immediately to make available tracks and other facilities to facilitate operations by AMTRAK for the duration of such emergency; and

It is further ordered, That this order shall be effective as of the date thereof.

By the Commission, Division 3, Commissioners Brown, MacFarland and Clapp.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37479 Filed 12-20-76;8:45 am]

federal register

TUESDAY, DECEMBER 21, 1976

PART II:

ENVIRONMENTAL PROTECTION AGENCY

■

LEAD ADDITIVES IN GASOLINE: CONTROLS ON REFINERS

Clarification and Response to Public Comments

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 659-3]

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

Lead Additives In Gasoline; Controls On Refiners; Response to Comments

On December 6, 1973 (38 FR 33734), the Environmental Protection Agency published in the FEDERAL REGISTER regulations controlling the amount of lead additives used in gasoline. Enforcement of the regulations is based upon quarterly reports required to be submitted by refiners and lead additive manufacturers. Refiners are required to report lead usage and gasoline production at each refinery. Lead additive manufacturers must provide information regarding the quantity of lead additives shipped to each refinery.

These regulations were the subject of court challenges until June of this year. Because of the ongoing litigation, EPA suspended enforcement on February 20, 1975 (40 FR 7480). The D.C. Circuit issued its opinion upholding the regulations on March 19, 1976, but the industry litigants indicated their intention to seek Supreme Court review. On April 1, 1976 (41 FR 13984), EPA continued the suspension of enforcement but reinstated the reporting requirements. The Supreme Court denied certiorari on June 14, 1976.

On September 28, 1976 (41 FR 42675), based on studies indicating that gasoline shortages would result if the original lead phase-down schedule were enforced, EPA amended the regulations. The amended regulations retain the original 0.5 gram per gallon (gpg) standard, but extend the period for compliance with that standard from January 1 to October 1, 1979, in order to permit sufficient time for refiners to install the equipment necessary to meet the reduced lead level without causing a gasoline shortage. The January 1, 1978, standard of 0.8 gpg also remains in effect but will be suspended if a refiner can show that he has taken, and is continuing to take, sufficient actions to insure the achievement of the 0.8 gpg standard at the earliest practicable date after January 1, 1978, and the 0.5 gpg standard by October 1979 or before.

The September 28, 1976, amendments provided opportunity for public comment within 30 days after the date of publication of the amendments. The purpose of this public notice is to clarify certain aspects of the information requirements under the December 6, 1973, regulations and to respond to the public comments regarding the September 28, 1976, amendments and clarify portions of the amendments where the comments have indicated there may exist some uncertainty as to their meaning.

LEAD USAGE AND GASOLINE PRODUCTION REPORTING REQUIREMENTS

Lead usage and gasoline production reports from refiners and lead additive manufacturers have been required for the 1976 April–June and July–September calendar year quarters. As a result of these reporting requirements, a number of questions have arisen regarding how to report lead usage and gasoline production under certain circumstances which occur in petroleum manufacturing and marketing operations. This notice will provide guidance with respect to how the reporting requirements impact these situations.

The provisions of 40 CFR 80.20(a)(1) setting forth maximum allowable lead content, and 40 CFR 80.20(a)(3) setting forth reporting requirements, apply to any gasoline refiner with respect to any refinery. Refiner is defined at 40 CFR 80.2(i) as "any person who owns, leases, operates, controls, or supervises a refinery." A refinery is defined as 40 CFR 80.2(h) as "a plant at which gasoline is produced." For the purpose of these regulations, "a plant at which gasoline is produced" includes any plant where any operation or process is performed such that the output of the plant is gasoline, except that a plant whose sole operation is to transfer gasoline or to blend nonlead additives (e.g. rust inhibiting compounds) into gasoline is not a refinery for these purposes. Plants which blend feedstocks to produce gasoline or blend feedstocks and gasoline and lead, or any combination thereof, are included within the definition of refinery.

A certain quantity of product may be processed into gasoline at one refinery, and then further processed into gasoline at another refinery. That is, there exist situations in the petroleum industry where a refinery receives a product that is already a substance comercially known as gasoline and further processes or blends that product. It is essential that production of a gallon of gasoline is reported only once in calculating average lead content; otherwise a dilution of lead averages will result.

Generally, a refinery can only count as part of its gasoline production total that gasoline actually produced or blended from a product that is not commonly or commercially known or sold as gasoline. That is, in computing the average lead content per gallon at a refinery pursuant to 40 CFR 80.20(a)(2), and reporting gasoline produced pursuant to 40 CFR 80.20(a)(3), a refinery can only count as "gasoline produced" the difference between the total output of what is commonly or commercially known as gasoline, and the initial input of gasoline (as distinguished from blending components). Thus, for example, absent the type of arrangement discussed below, a blending plant which obtains high octane gasoline from others and blends it with lead and low octane blending components may not report its total gasoline output as "gasoline produced." That is, if refinery "A" produces 100 gallons of gasoline and sells it to refinery "B," which further blends or processes that gasoline and sells it to refinery "B," count that 100 gallons as part of its production total; "B" may not. However, as a matter of enforcement policy, refineries will be permitted to shift reporting in gallonage of gasoline produced under narrow circumstances where further processing of that gasoline takes place. Thus, it will be permissible for "B" to report that 100 gallons as gasoline produced by "B," so long as "A" has not counted that 100 gallons. In this narrow situation where refinery "B" further processes gasoline supplied by refinery "A" a reporting shifting arrangement is permissible.

Process and exchange agreements for products which are commonly or commercially known as gasoline (as contrasted with feedstock or blending components) do not alter the requirement that such products must be reported by the refinery which manufactures the gasoline. For example, if refinery "A" produces 100 gallons of gasoline for the account of refinery "B," refinery "A" must count that volume as gasoline produced. Where refinery "A" produces a product which is clearly not gasoline and sells it to "B" which processes it into gasoline, only "B" may count the volume produced.

There may be cases where it is not clear whether the product refinery "A" has produced and sold to refinery "B" for further processing is gasoline. So long as the determination of whether a product is gasoline is reasonable and the volume is reported only once, it will be accepted by EPA. In all cases of reporting shifting, it will be the responsibility of the subsequent processor of the gasoline (refinery B) to assure that double reporting does not occur. In any case of double reporting EPA will exclude the subject gasoline gallonage from the output of the subsequent refiner for determining compliance with the lead content standards.

The following table summarizes the system for reporting volume of gasoline produced:[1]

[1] This table only applies to reporting volume of gasoline, not to lead usage reporting.

Case 1 Reprocessing of gasoline: Refinery "A" produces gasoline, sells it to refinery "B" which further processes it.	"A" reports volume, but O.K. to arrange for "B" to report if "A" does not.
Case 2 Processing feedstock: Refinery "A" produces feedstock clearly not gasoline, sells to refinery "B" which processes it into gasoline.	"B" reports volume, "A" does not.
Case 3 Processing of product which may be feedstock or gasoline: Refinery "A" produces a product which may or may not be gasoline, sells to "B" which further processes it into gasoline.	"B" must determine if "A" has reported volume, if so, "B" may not report volume.

Questions have also arisen as to who must report lead usage for the purpose of calculating average lead content pursuant to 40 CFR 80.20(a)(2) and 80.20(a)(3)(v). In all cases, the lead usage is to be reported by the refinery actually using the lead in its operations. In most cases, the quantity of lead used will be the same amount as the change in lead inventory reflected on the lead report form. However, in some cases the lead inventory may be depleted through the shipping of lead from one refinery to another refinery where it is actually used. In those cases, it is still the figure for lead actually used which must be used in determining average lead content. EPA Form #3520–2 will be changed to account for this (at present the form does not provide for the possibility of lead being shipped out of a refinery). The form will also be amended so that when the change in lead inventory differs from the quantity of lead actually used, an explanation of the reason for the difference must be provided. For example, refinery "A" may have a change in lead inventory equal to 200,000 kilograms of lead during a particular quarter. However, refinery "A" may have used 150,000 kilograms of lead in the production of gasoline, and shipped 50,000 kilograms of lead to refinery "B." In that situation, average lead content for refinery "A" will be determined on the basis of 150,000 kilograms of lead, and refinery "A" must also explain the 50,000 kilogram difference. Refinery "B" must report the 50,000 kilograms of lead shipped to it by refinery "A" as part of its lead additive inventory computations.

RESPONSES TO COMMENTS RECEIVED PURSUANT TO THE SEPTEMBER 28, 1976 AMENDMENTS

In response to the amendments promulgated in the September 28, 1976 FEDERAL REGISTER (41 FR 42675), twenty-nine written comments were received. Other comments were discussed during meetings with refiner representatives and EPA staff and during numerous telephone discussions between refiners and EPA staff.

Comments were received concerning the suspension provision in general. There were a number of inquiries about the criteria to be used in granting a suspension of the 0.8 gpg standard. The criteria are those set forth in the September 28, 1976 FEDERAL REGISTER notice (41 FR 42675), and as clarified in this notice.

1. *Construction compliance schedules.* Section 80.20(a)(4)(ii) establishes requirements for the submission of construction compliance schedules by refiners who intend to achieve compliance, in whole or in part, through construction of additional octane processing facilities. A number of comments exhibited concern that insufficient time was provided to formulate a detailed plan and to complete advance planning and scheduling required by the compliance schedule due January 31, 1977. Given the facts that the industry was put on notice as to the phase-down requirements of these regulations at the time of their promulgation in December 1973, that the regulations were upheld by the D.C. Court of Appeals on March 19, 1976, and that the United States Supreme Court refused certiorari in June 1976, EPA believes that the additional four month period provided by the September 28, 1976, amendments to establish a compliance plan is ample. In order to obtain a suspenison of the January 1978, 0.8 gpg standard, a sufficiently detailed schedule of milestone activities must be submitted by January 31, 1977, to indicate to EPA the actions which will be taken to achieve compliance. A recommended format for the submitted plan is outlined in the Format Section of this notice.

In a similar comment, the Agency was asked whether a refiner would lose its right to request a suspension if all the details and specific dates of the compliance schedule are not firm by January 31, 1977. The key events of the compliance schedule should be firm by January 31, 1977. A company will not be granted a suspension if the plan submitted by January 31, 1977, does not contain sufficient specificity regarding the key milestone activities and the time at which they are scheduled to occur to adequately demonstrate timely compliance with the standards.

Other questions were raised regarding how EPA will treat cases where construction permits cannot be obtained or there are delays in construction because a refinery is in a non-attainment area. EPA will announce the policy which it will follow in such cases in a separate FEDERAL REGISTER notice regarding an interpretive ruling on the preconstruction review requirements of 40 CFR 51.18.

Several comments referred to potential delays in construction and procuring equipment. The Agency believes sufficient time has been provided to purchase and install the necessary octane processing facilities to achieve the standard in a timely fashion. It is expected that all necessary actions (including the implementation of overtime construction schedules and purchasing equipment from alternate suppliers, if necessary) will be undertaken to achieve compliance. The October 1, 1979, date is firm. In those instances where construction is delayed such that a scheduled milestone is not met, the Agency must be notified. Upon such notification, EPA will take enforcement action appropriate under the circumstances.

2. *Feedstock or blending component process or exchange agreements.* When a refiner intends to achieve compliance with the 0.8 gpg or the 0.5 gpg standard either wholly or partially through entering and implementing feedstock or blending component process or exchange agreements, § 80.20(a)(4)(iv) requires that the compliance schedule contain a general description of such agreements. The description must include dates for entering and implementing each such agreement and should identify the parties involved.

Several commenters asked how suspensions will be determined in the case of feedstock or blending component exchanges or processing agreements as regards to type of agreement and timing. Agreements will be reviewed on the basis of timeliness with respect to meeting the 0.8 gpg and 0.5 gpg standards. In the event a refiner cannot enter into an appropriate agreement to obtain 0.8 gpg until, for example, September 1, 1979, this will not preclude suspension if this is the earliest practicable date at which 0.8 gpg could be achieved. The agreement is included in a submitted plan that is otherwise complete, and the 0.5 gpg standard is to be achieved after October 1, 1979.

Clarification was also sought on whether § 80.20(a)(4)(iv) applies to both inter-company and intra-company arrangements. Submittals under this section apply to inter- and intra-company transfers, sales, exchanges, and processing arrangements on a refinery by refinery basis.

One commenter asked whether or not a refinery which intended to meet the 0.8 gpg and 0.5 gpg standards through feedstock or blending component processing or exchange agreements, without seeking a suspension, must notify the Agency. No notification is necessary unless there is a reduction in gasoline production or a significant change in product mix.

3. *Reduction in gasoline production or a significant change in product mix.* Section 80.20(a)(4)(v) requires EPA to be notified by December 31, 1976, by any refiner intending to achieve compliance by any reduction in gasoline production at any refinery or by a significant change in product mix at any refinery. Several commenters have sought clarification as to what is to be considered a reduction for notification purposes. In measuring a reduction in gasoline production or change in product mix the production level under these regulations is to be compared to the production level in the absence of these regulations for the period January 1, 1978, through December 31, 1979. The rate basis to be used is quarterly calendar production. For purposes of these submittals, a change in production or a significant change in product mix is a measurable change.

Some comments suggested limiting submissions of gasoline production changes or product mix changes to those of 5% or more. Other comments inquired as to whether a change in the grade of motor gasoline would constitute a product mix change. The Agency does not believe it would be useful to arbitrarily establish a threshold level of change to trigger the submission of information. The petroleum marketing industry is capable of making marketing projections of future demand for petroleum products and plant production levels required to satisfy demand. If in order to comply with the lead phase-down regulations a measurable reduction in gasoline production (by grade) is projected or a measurable change is projected in the mix of products (at a refinery) which compete for the higher octane blending components used in the production of gasoline as lead content is reduced, EPA must be notified of that change. For the

purpose of accounting for product mix changes, only changes in the mix of products which compete for high octane blending components is considered significant. A change in the mix of grades of motor gasoline is considered significant. Changes in product mix or reductions in gasoline production which would occur in the absence of the lead phase-down regulations should not be submitted. Likewise, changes in the octane quality of any grade of gasoline are not considered significant for these purposes and should not be submitted.

Several commenters asked EPA to clarify whether gasoline "production" was intended to mean the amount of "gasoline planned to be manufactured" after January 1, 1978, or whether it was intended to mean the amount of "gasoline manufacturing capacity planned" after 1978. Gasoline production as used in § 80.20(a)(4)(v) is intended to mean the amount of gasoline which is planned to be actually produced on a quarterly basis after January 1, 1978, and before December 31, 1979. It is to be measured in terms of barrels of output product per calendar quarter, not barrels of output per unit of input. A reduction in output per unit of input should only be reported if it is accompanied by a reduction in absolute output (barrels per quarter) from that which would occur in the absence of the phase-down regulations.

4. *Small refiners.* Comments were received regarding the Agency's treatment of small refiners (less than 30,000 barrels per day (bbl/d) crude capacity). Several commenters suggested that additional time be granted to small refiners to submit information required by the December 31, 1976, and January 31, 1977, reporting requirements since EPA will not have made a decision regarding small refiner relief before the latter part of December. EPA agrees that extensions of these dates are warranted for small refiners. By means of this notice, enforcement against small refiners for failure to comply with § 80.20(a)(4)(v) will be suspended until March 31, 1977, by which time the information must be submitted. EPA will not enforce the 0.8 gpg January 1, 1978, standard for those small refiners whose plan pursuant to § 80.20(a)(4)(ii) is submitted after January 31, 1977, so long as the information is submitted by April 31, 1977, and all other suspension criteria are met.

Other comments sought a change in the definition of "small refiner," suggesting a definition of 50,000 bbl/d or less, accounting for age and type of refinery, or changing from a "small refiner" to "a small refinery" basis. An additional comment suggested that the standard for small refiners should be changed to the California Air Resources Board schedule of 1.4 gpg or be eliminated completely. A number of commenters (mostly, major oil companies) recommended against providing any special relief for small refiners.

EPA is currently considering all of these comments in conjunction with its ongoing evaluation of the small refiner issue. An Agency decision regarding the treatment of small refiners under the lead phase-down regulations will be forthcoming.

5. General comments. Several commenters stated that the failure to grant a blanket exemption if industry in general could not meet the 0.8 gpg standard would penalize the provident refiner who moved forward to install octane processing equipment during the litigation of the regulations. If this comment is accurate, it is an unfortunate and undesirable result of the court challenges to these regulations. Such a result is contrary to that intended by EPA. Nevertheless, because many delays have already occurred regarding the Agency's original timetable for phasing down the lead content of gasoline, EPA deems it of primary importance that the lead content of gasoline be phased down as rapidly as feasible in order to minimize the health risks associated with the lead emissions from automobiles. In order to accomplish this objective, those refineries that can achieve the 0.8 gpg standard without cutting back on gasoline production must do so as early as practicably feasible.

A number of commenters asked whether force majeur or other problems which preclude achieving the submitted milestone activities after a suspension has been granted will cause revocation of the suspension. As indicated in the preamble to the September 28, 1976, amendments, a refiner must meet the dates on any schedule submitted to make a satisfactory showing that sufficient actions are being taken to warrant suspension of the 0.8 gpg standard. As a general rule, failure to achieve the submitted milestone activity dates will constitute sufficient cause for revocation of the suspension. If situations arise in which circumstances beyond the control of the refiner cause a delay in meeting the submitted milestones (or subsequently cause the refiner to exceed the lead phase-down standard at a particular refinery), EPA will evaluate such situations on a case by case basis. If the schedule is not met, notification to the EPA is required regardless of the reason for the delay, and in all such cases the refiner will be expected to have taken all reasonable steps to have avoided the delay and to compensate for it in the future.

One comment raised the question of extending phase-down controls to imported gasoline to prevent advantage to foreign refiners and domestic refiners using foreign gasoline. EPA is currently evaluating this issue. If controls over imported gasoline are subsequently deemed advisable, appropriate regulatory changes will be made.

Several commenters asked whether periodic updating of submissions was required. No periodic updating is required under the promulgated amendments. However, if a key event of the compliance plan does not occur on the submitted date, the refiner must notify EPA in accordance with § 80.20(a)(4)(vii). It should be noted that under § 80.20(a)(4)(vi) the Administrator may require the submission of additional information, upon thirty days written notice, if he deems such information relevant to a determination of compliance with the regulations. If a refiner does not file for a suspension of the 0.8 gpg limitation and will not have a gasoline volume reduction or a significant change in product mix at a refinery, then no new information need be submitted.

SUGGESTED FORMAT

The September 28, 1976, FEDERAL REGISTER announcement made suspension of the 0.8 gpg requirement for any refinery conditional on submission by January 31, 1977, of a schedule for achieving compliance with § 80.20(a)(1). A number of refiners have requested guidance as to what would constitute an acceptable submission.

In general, an acceptable submission would meet three criteria:

1. It would demonstrate that the refinery has made and is making good faith efforts to achieve compliance with the 0.8 gpg requirement as early as practicable, and compliance with the 0.5 gpg requirement no later than October 1, 1979.

2. It would include a compliance schedule containing specific and readily verifiable milestones of key events which, if implemented as scheduled, will lead to the timely achievement of compliance.

3. It would be short, direct and no more detailed than necessary to convey the information identified above.

Recommended formats for information submitted pursuant to §§ 80.20(a)(4)(ii), (iii), (iv), and (v) are illustrated in this notice. These formats should be followed to the greatest extent practicable. Only information regarding key milestone events in the compliance plan should be submitted, and all such information should be submitted in a concise, summary form. If any refiner deems it important to submit supplementary information which is outside the scope of the formats illustrated in this notice in order to convey to EPA the essential elements of the compliance plan for any refinery, such information should be submitted as an attachment to the formats described herein.

Four separate formats should be utilized, as appropriate, in submitting the relevant information: (1) List of Key Events of Compliance Plan, (2) List of Key Construction or Modification Contracts Necessary to Carry Out Compliance Plan, (3) List of Feedstock or Blending Component Process or Exchange Agreements Necessary to Carry Out Compliance Plan, and (4) Reduction in Gasoline Production or Significant Change in Product Mix. Format (1), the List of Key Events of Compliance Plan for each refinery, is the basic submission which will be reviewed to evaluate whether any application for suspension of the 0.8 gpg standard will be granted. As shown in the sample format, the List of Key Events must summarize all key events regarding facility construction or modification and feedstock or blending

component process or exchange agreements which, if implemented as scheduled, will result in timely compliance. In addition, the List of Key Events must specifically identify the date at which the refinery for which the suspension is requested will comply with the 0.8 gpg and the 0.5 gpg standards. If the date for compliance with each standard is the same, it should be so indicated.

Formats (2) and (3) are intended to supplement the information supplied in the List of Key Events. Format (4) should be used to submit information pursuant to § 80.20(a)(4)(v). The formats are straightforward and easy to follow. The summary descriptions and other information that are called for by each of the formats should be concise and to the point.

Separate plans must be submitted by each refinery for which a suspension of the 0.8 gpg standard is requested. Each submission should contain the name and signature of the responsible official requesting the suspension. If there are any questions regarding the information which should be submitted pursuant to each format, telephone Mark S. Siegler, Chief, Fuels Section, Mobile Source Enforcement Division at (202) 755-2816.

Date: December 14, 1976.

STANLEY W. LEGRO,
Assistant Administrator for Enforcement (EN-329).

FORMAT 1.—LIST OF KEY EVENTS OF COMPLIANCE PLAN

Name of refinery _____
Location of refinery _____
Name of refiner _____
Name of person to contact _____
Telephone _____

	Implementation date[1]
I. *Key construction or modification events*	
A. Construction or modification of facility (A)[2]	
1. Completion of plans and engineering drawings	
2. Ordering of equipment	
3. Receipt of equipment	
4. Signing of construction contracts	
5. Commencement of construction	
6. Completion of construction	
7. Commencement of testing	
8. Completion of testing	
9. Operational status	
B. Construction or modification of facility (B)[2]	
1. Completion of plans and engineering drawings	
2. Ordering of equipment	
3. Receipt of equipment	
4. Signing of construction contracts	
5. Commencement of construction	
6. Completion of construction	
7. Commencement of testing	
8. Completion of testing	
9. Operational status	
C.	
•	
•	
•	
II. *Key feedstock or blending component process or exchange agreements*	
A. Exchange agreement No. 1 for (type of feedstock or blending component)	
B. Exchange agreement No. 2 for (type of feedstock or blending component)	
•	
•	
•	
C. Process agreement No. 1 to (summary description of agreement)	
D. Process agreement No. 2 to (summary description of agreement)	
•	
•	
•	
III. *Compliance dates*	
A. Achieve compliance with 0.8 gpg standard	
B. Achieve compliance with 0.5 gpg standard	

Name of responsible official _____
Signature of responsible official _____
Date _____

[1] For each construction or modification event the implementation date shall be that date corresponding to that element of the event having the longest leadtime.

[2] Facility refers to any operational unit of the refinery such as a reformer, catalytic cracker, or any other unit constructed or modified to achieve compliance with the lead phase-down standards.

FORMAT 2.—LIST OF KEY CONSTRUCTION OR MODIFICATION CONTRACTS NECESSARY TO CARRY OUT COMPLIANCE PLAN

Name of refinery
Location of refinery
Name of refiner
Name of person to contact
Telephone

Summary description of contract [1]	*Name and address of prime contractor*	*Prime contractor personnel to contact*
Contract No. 1	Name: Address:	Name: Telephone:
Contract No. 2	Name: Address:	Name: Telephone:

Name of responsible official
Signature of responsible official
Date

[1] The summary description shall include a reference to the facility and key event to which the contract in question pertains.

FORMAT 3.—LIST OF KEY FEEDSTOCK OR BLENDING COMPONENT PROCESS OR EXCHANGE AGREEMENTS NECESSARY TO CARRY OUT COMPLIANCE PLAN

Name of refinery
Location of refinery
Name of refiner
Name of person to contact
Telephone

	Date of entering agreement	*Date of implementing agreement and duration*	*Name and address of other party to agreement*	*Person to contact representing other party*
I. Summary description of exchange agreement(s):				
A. Exchange agreement No. 1			Name: Address:	Name: Telephone:
B. Exchange agreement No. 2				
II. Summary description of process agreement(s):				
A. Process agreement No. 1			Name: Address:	Name: Telephone:
B. Process agreement No. 2				

Name of responsible official
Signature of responsible official
Date

FORMAT 4.—REDUCTION IN GASOLINE PRODUCTION OR SIGNIFICANT CHANGE IN PRODUCT MIX

Name of refinery
Location of refinery
Name of refiner
Name of person to contact
Telephone

	January–March 1978	*April–June 1978*	*July–September 1978*	*October–December 1978*	*January–March 1979*	*April–June 1979*	*July–September 1979*	*October–December 1979*
I. Reduction in gasoline production:								
A. Grade A production (barrels)								
1. Without lead phase down								
2. With lead phase down								
3. Net change								
B. Grade B production (barrels)								
1. Without lead phase down								
2. With lead phase down								
3. Net change								
II. Significant change in product mix:								
A. Product A production (barrels)								
1. Without lead phase down								
2. With lead phase down								
3. Net change								
B. Product B production (barrels)								
1. Without lead phase down								
2. With lead phase down								
3. Net change								

Name of responsible official
Signature of responsible official
Date

[FR Doc.76-37194 Filed 12-20-76;8:45 am]

federal register

TUESDAY, DECEMBER 21, 1976

PART III:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2517]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Wenatchee, Chelan County, Washington

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Wenatchee, Chelan County, Washington.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall in the main lobby, 129 South Chelan Avenue, Wenatchee, Washington.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Jack Grover, 129 South Chelan Avenue, Wenatchee, Washington. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

AREAS FLOODED

Flooding in Wenatchee is mainly caused by drainage from Canyons No. 1 and 2, and Dry Gulch. For the 100-year flood, shallow sheet flooding occurs in the western part of the City to an estimated depth of one foot. The flood insurance Zone A0 is located north of Cherry Street. The eastern boundary is formed by the following streets: Pearl Street, Charles Street, Princeton Street, Pear Lane, Elliott Avenue and Berg Avenue. The rest of the City, except for a small section in the southwest, is subject to shallow flooding with depth less than one foot.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37155 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2516]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Brewster, Okanogan County, Washington

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Brewster, Okanogan County, Washington.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in the foyer of the City Hall, Brewster, Washington.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Howard M. Pamble, Town of Brewster, Washington 98812. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Swamp Creek	Bridge St	797
	NW. of U.S. 97	821
	NW. of RR	860
	4th St. NW	880
	North corporate limits	890

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37156 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2515]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Emporia, Virginia

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Emporia, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building on the bulletin board, 201 South Main Street, Emporia, Virginia.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William H. Ligon, 201 South Main Street, Emporia, Virginia 23847. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Meherrin River	Hicksford Ave	98
	Seaboard Coast RR. Bridge.	99
	Main St	100
	Interstate 95	104
	Vepco Dam	105

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance

Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.78-37157 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2514]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Borough of Emmaus, Lehigh County, Pennsylvania

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Emmaus, Lehigh County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in Town Hall, 24 South Fourth Street, Emmaus, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Pierce Randall, Emmaus Town Hall, 24 South Fourth Street, Emmaus, Pennsylvania 18049. The period for comment will be 90 days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Leibert Creek	1st driveway upstream from corporate limits.	358
	2d driveway upstream corporate limits.	365
	Chestnut St	380
	Upstream edge of ConRail tracks.	387
	Service Rd in Community Park.	392
	Shimerville Rd	403
	Pennsylvania Ave	432
Little Lehigh Creek.	Downstream corporate limit.	324
	500 ft downstream of Cedar Creek Blvd.	325
	Cedar Crest Blvd	328

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: Novemebr 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.78-37158 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2513]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Wayne, Steuben County, New York

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Wayne, Steuben County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Wayne Town Hall, Wayne, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Charles Morris, Town Supervisor, 1320 East Lake Road, Hammondsport, New York 14840. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Keuka Lake	Hyatt Hill Rd	721
	Hines Rd	721
Waneta Lake	Bubbling Spring Rd. (extension).	1,105
	Plaisted Rd (extension).	1,105

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1969), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37159 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2512]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Naples, Ontario County, New York

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Naples, Ontario County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board, Village Office, 106 South Main Street, Naples, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Duane G. Schultz, 17 Elizabeth Street, Naples, New York 14512. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Naples Creek	Downstream corporate limits.	725
	Toby St. extended	733
	Ontario St	750
	Monier St. extended	757
	Mechanic St. extended.	765
	Sprague St. extended	777
	Weld St. extended	786
	Confluence with Grimes Creek.	797

Source of flooding	Location	Elevation in feet above mean sea level
Grimes Creek	Confluence with Naples Creek.	797
	Main St	807
	James St	812
	1,300 ft upstream of Main St.	834
	Upstream corporate limits.	
Eelpot Creek	Confluence with Tannery Creek.	797
	South Main St	812
	Corporate limits	820.5
Tannery Creek	Confluence with Eelpot Creek.	797
	Southern corporate limits.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37160 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2511]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Amityville, Suffolk County, New York

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Amityville, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall, 21 Greene Avenue, Amityville.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Humbert O. Martin, Jr., 21 Greene Avenue, Amityville, New York 11701. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Great South Bay	Western corporate limits.	5
	Richmond Ave	5
	Ocean Ave	5
	Grand Central Ave	5
	Eastern corporate limits.	5

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37161 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2510]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Village of Randolph, Missouri

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the village of Randolph, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village of Randolph must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Village Offices, Route 13, Kansas City, Missouri 64117.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Joe Vanendaele, Jr., Route 13, Kansas City, Missouri 64117. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Unnamed creek (east branch)	100 ft east of Randolph Rd	750	25	25
Unnamed creek (north branch)	6th St. (extended)	751	25	15
Missouri River	I-435 (upstream side)	742	(1)	(1)

1 190 ft from corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37162 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2509]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Houston, Missouri

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128,and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Houston, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Houston must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 111 West Main Street, Houston, Missouri 65483.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor David Impey, City Hall, 111 West Main Street, Houston, Missouri 65483. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Brushy Creek	U.S. Highway 63 (upstream side)	1,075	200	50
	U.S. Highway 63 (downstream side)	1,075	300	50
	Walnut St	1,072	100	400
Coyle Branch	East Main St	1,074	60	100
	U.S. Highway 63 (upstream side)	1,092	50	70

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37163 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2508]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Eminence, Missouri

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Eminence, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Eminence must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Eminence, Missouri 65466.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Paul Faulkenberry, City Hall, P.O. Box 387, Eminence, Missouri 65466. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Jacks Fork River	Missouri Highway 19 (upstream side)	635	1,020	(1)
French Hollow	Old Highway 19	663	100	30
Town Branch	Missouri Ave. (extended)	635	130	60
Town Branch Tributary.	6th St	678	50	60

[1] Outside corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37164 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2507]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Robbinsdale, Minnesota

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Robbinsdale, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Robbinsdale must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Municipal Building, Robbinsdale, Minnesota 55422.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor James H. McDonald, Municipal Building, 4221 Lake Road, Robbinsdale, Minnesota 55422. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width—approximate width of the 100-yr flood boundary in feet
Rice Lake (northern part).	Burlington Northern R.R.	838	1,230
Grimes Ave. Pond	Burlington Northern R.R.	838	1,200

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 29, 1969), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37165 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2506]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Cold Spring, Minnesota

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Cold Spring, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Cold Spring must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 27 Red River Street, Cold Spring, Minnesota 56320.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Pat Cheeley, City Hall, 27 Red River Street, Cold Spring, Minnesota 56320. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Sauk River	Minnesota Highway 23 (upstream side).	1,091	10	350

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974).

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37166 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2505]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Township of Muskegon, Michigan

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Township of Muskegon, Michigan.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township of Muskegon must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Township Hall, 1990 Apple Avenue, Muskegon, Michigan 49442.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William Farwig, Supervisor, Township Hall, 1990 Apple Avenue, Muskegon, Michigan 49442. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Bear Creek Drain	Witham	585	1,040	(1)

[1] To corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 22, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37167 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2504]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Dartmouth, Massachusetts

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Dartmouth, Massachusetts.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Dartmouth must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, 249 Russells Mill Road, Dartmouth, Massachusetts 02748.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. James Almeida, Chairman, Board of Selectmen, 249 Russells Mill Road, Dartmouth, Massachusetts 02748. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Paskamanset River.	Kempton St	43.0
Buttonwood Brook.	Elm St	12.5
	Russells Mill Rd	36.0
	Milton St	53.0
	Sharp St	71.0
	Allen St	81.0
	Hawthorne St	84.0
	Lexington	106.0
Buttonwood Brook (branch C).	Sharp St	71.0
Buttonwood Brook (branch D).	Cypress St	60.0
Buzzards Bay	Hetty Green St	12.5
	Round Hill Point	12.5
	Mishaum Point	12.5
	Salters Point	12.5
	Ricketsons Point	12.5
	Moshers Point	12.5
	Rogers St	12.5

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37168 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2503]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Barnstable, Massachusetts

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Barnstable, Massachusetts.

Due to recent engineering analysis, this notice revises the proposed determinations of base flood elevations published in the FEDERAL REGISTER at 41 FR 24394 on June 16, 1976, and in "the Cape Cod Times" published on June 14, 1976 and June 15, 1976, and hence supersedes those notices. Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information show-

ing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, 397 Main Street, Hyannis, Massachusetts 02601.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William H. Eshbaugh, Chairman, Board of Selectmen, Town of Barnstable, 397 Main Street, Hyannis, Massachusetts 02601. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community or ninety days from publication of this notice in the FEDERAL REGISTER, whichever is the later.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width [1]
Cape Cod Bay	Bone Hill Rd.	10.5	460
	Indian Trail	10.5	460
	Rendezvous Lane	10.5	640
	Crocker Lane	10.5	1,280
Hyannis Harbor	Sea St.	10.0	280
	Lighthouse Lane	10.0	420
Centerville Harbor	Irving St.	10.0	160
	South Main St.	10.0	[2]
West Bay	Bay View Dr.	11	[3]
Cotuit Bay	Oyster Rd.	11	380

[1] Approximate distance in feet from shoreline to boundary of 100-yr flood.
[2] To 300-ft north of intersection with Hornbeam Lane.
[3] To intersection with Bridge St.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

J. ROBERT HUNTER,
Federal Insurance Administrator.

NOVEMBER 19, 1976.

[FR Doc.76-37169 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2502]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Sykesville, Carroll County, Maryland

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Sykesville, Carroll County, Maryland.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Bulletin Board in the Town Hall, 7547 Main Street, Box 3, Sykesville.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William Brandenburg, Sr., 7547 Main Street, Box 3, Sykesville, Maryland 21784. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Piney Branch	B&O RR Bridge	410
	Oklahoma Hill Rd.	475
Tributary No. 1	Church St.	391

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.37170 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2501]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Dyersville, Dubuque and Delaware Counties, Iowa

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Dyersville, Dubuque and Delaware Counties, Iowa.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Bulletin Board, City Hall, 340 First Avenue, East Dyersville, Iowa.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Jerome Koch, 340 First Avenue, East Dyersville, Iowa 52040. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
North Fork of Maquoketa River.	Upstream corporate limits.	949
	Hewitt Creek confluence.	946
	C. & G.W. RR	944
	3d Ave	940
	Downstream corporate limits.	939
Bear Creek	Upstream corporate limits.	947
	1st Ave. West	941
	3d St. SW	939
	North Fork of Maquoketa River confluence.	939
Hewitt Creek	Upstream corporate limits.	948
	State Highway 136	946
Unnamed Creek	Upstream corporate limits.	958
	County Rd	948
	Hewitt Creek confluence.	947

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37171 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2500]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Madison, Jefferson County, Indiana

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Madison, Jefferson County, Indiana.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Mayor's Office, City Hall, 416 West Street, Madison.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Warren R. Rucker, M.D., City Hall, 416 West Street, Madison, Indiana 47250. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Ohio River	West corporate limits	462
	Confluence with Big Clifty Creek.	463
	Confluence with Crooked Creek.	463
	McIntire St. (extended).	464
	West St. (extended)	464
	Harrison St. (extended).	465
	East corporate limits	465
Crooked Creek	Main St	463
	Penn Central RR	463
	Plum St. (extended)	465
	West 5th St	470
	Jefferson St	479
	East corporate limits	484

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974).

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37172 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2499]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Chamblee, Georgia

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Chamblee, Georgia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Chamblee must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at 5468 Peachtree Boulevard, Chamblee, Georgia 30341.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor W. B. Malone, 5468 Peachtree Boulevard, Chamblee, Georgia 30341. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Nancy Creek tributary No. 1.	Keswick Dr.[1]	943
	Keswick Dr.[2]	947
Nancy Creek tributary No. 1.1	Cold Spring Lane	941
Nancy Creek tributary No. 1.2.	Confluence with tributary 1.	933
Nancy Creek tributary No. 2.	Longview Dr	950
North Fork Peachtree Creek tributary No. 1.	Hickory Rd.[2]	944
	Canfield Dr	945
North Fork Peachtree Creek tributary No. 2.	Carroll Ave	955
	Old Stone Mountain Rd.	975
North Fork Peachtree Creek tributary No. 2.1.	Munday Dr.[2]	934
	Blackburn Way [2]	977
	Catalina Dr.[2]	990

[1] Downstream.
[2] Upstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37173 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2498]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the County of Escambia, Florida

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Public L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed de-

terminations of flood elevations for the County of Escambia, Florida.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the County of Escambia must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Escambia County Courthouse, P.O. Drawer 1591, Pensacola, Florida 32597.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Jack Kennedy, Chairman, Board of Commissioners, Escambia County Courthouse, P.O. Drawer 1591, Pensacola, Florida 32597. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Gulf of Mexico	Seaward of State Route 292 at county line.	11
	Seaward of State Route 292 at Gulf Beach.	11
	Gulf Beach waterfront.	10
Old River	County line, Perdido Key.	8
	Kees Bayou	8
	Holiday Harbor Marina.	8
Perdido Bay	Ramsey Beach	6
	Paradise Beach	6
	Perdido Heights (south of Cummings Point).	7
	Tarkiln Bay	7
Perdido River	Hurst Landing	6
Bayou Grande	State Route 292	7
	End of Waycross Ave.	7
	Navy Point	8
	Jones Point	9
Santa Rosa Sound.	Fishing Bend	8
Pensacola Bay	Star Lake	9
	St. Louis & San Francisco R.R.	9
Bayou Chico	Garden St. (U.S. 98)	7
	End of Alba Plena Street.	8
Carpenter Creek	City line (Pensacola)	7
Escambia Bay	State Route 8	10
Escambia River	U.S. 90/State Route 10.	11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37174 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2497]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Alamosa, Colorado

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Alamosa, Colorado.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Alamosa must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, P.O. Box 419, Alamosa, Colorado.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor M. J. Husung, City Hall, P.O. Box 419, Alamosa, Colorado 81101. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Rio Grande	D. & R.G.W. R.R. bridge.	7,537
	State Street Bridge	7,541
Rio Grande left overbank.	North River Road Bridge.	7,541
Rio Grande right overbank.	State Ave	7,537
	Main St	7,540
	Murphy Dr	7,542

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37175 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2496]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Marysville, California

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Marysville, California.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Marysville must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, P.O. Box 150, Marysville, California 95901.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Francis W. Comarsh, City Hall, P.O. Box 150, Marysville, California 95901. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Feather River	10th St	71
	5th St	70
Yuba River	Simpson Lane	72
	Southern Pacific RR.	71
	E St	70
Jack Slough	Highway 70	71
	Southern Pacific RR.	71

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37176 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2495]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of El Cajon, California

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of El Cajon, California.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of El Cajon must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 200 East Main Street, El Cajon, California 92020.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Robert L. Cornett, City Hall, 200 East Main Street, El Cajon, California 92020. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Forester Creek	Bradley Ave	383
	Vernon Ave	390
	Fletcher Parkway	403
	Arnelle Ave	404
	Johnson Ave	405
	Ballantyne Ave	427
	Mollison Ave	442
	1st St	458
	2d St	479
	Interstate Route 8	498
	Main St	498
County Ditch Creek	Interstate Route 8	405
	Johnson Ave	416
	Main St	424
	El Cajon Blvd. (downstream)	425
	El Cajon Blvd. (upstream)	426
County Ditch Creek	Lexington Ave	429
	Washington Ave	438
	Patricia Lane	438
	Grant Ave	442
	Renette Ave	445
Washington Creek	Interstate Route 8	412
	Madison Ave	423
	Wisconsin Ave	425
	Park Ave	430
	Cypress Ave	433
	Julian Ave	437
	Main St	438
	Claydelle Ave	440
	Avacado Ave	442
	Taft Ave	444
	Lincoln Ave	448
	Lexington Ave	448
	Mollison Ave	453
	Anza St	461
	1st St	467
	Ballard St	734
	2d St	481
	Washington Ave	486
	Dorothy St	491
	Jamacha Rd	502
Broadway Creek	Cypress Ave	393
	Mollison Ave	435
	Anza St	451
	1st St	459
	Oro St	474

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator (34 FR 2680, February 27, 1969), as amended by 39 FR 2787, January 24, 1974)

Issued: November 19, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-37177 Filed 12-20-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2494]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Town of Warren, Vermont

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Warren, Vermont.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Warren must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Municipal Building, RFD, Warren, Vermont.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. David DeFreest, Chairman, Board of Selectmen, Municipal Building, RFD, Warren, Vermont 05674. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Mad River	State Route 100 bridge [1]	788	(2)	(2)
	Warren Road Bridge [1]	855	(2)	(2)
	State Route 100 bridge [1]	915	10	(2)
Freeman Brook	Warren Road Bridge [1]	883	(2)	(2)
	Freeman Brook Road Bridge [1]	901	(2)	150
	do	915	(2)	10

[1] Downstream side of road.
[2] At bank.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 12, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.76-37178 Filed 12-20-76;8:45 am]

federal register

TUESDAY, DECEMBER 21, 1976

PART IV:

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

■

NORTH PENN EMPLOYEES' SAVINGS PLAN AND PENCO SAVINGS AND PROFIT SHARING PLAN

Exemption from Prohibitions

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

NORTH PENN EMPLOYEES' SAVINGS PLAN AND PENCO SAVINGS AND PROFIT SHARING PLAN

Exemption From Prohibitions

Notice is hereby given of the pendency before the Internal Revenue Service (the Service) and the Department of Labor (the Department) of a proposed exemption from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code, and from the restrictions of sections 604(a), 604(b)(1) and (2), and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) related to the exchange of certain assets between a party in interest and disqualified person and the North Penn Employees' Savings Plan (North Penn Plan Application No. D-150) and the Penco Savings and Profit Sharing Plan (Penco Plan Application No. D-381). The pending exemption was requested in applications filed by the trustee of the North Penn Plan and the trustees of the Penco Plan pursuant to section 4975(c)(2) of the Code and section 408(a) of the Act, and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722 and ERISA Procedure 75-1 (40 FR 18741, April 28, 1975).

Summary of Facts and Representations. The applications contain representations with regard to the pending exemption which are summarized below. Interested persons are referred to the applications on file with the Service and the Department for the complete representations of the trustees of the North Penn Plan and the Penco Plan.

1. North Penn Gas Company (North Penn) is a Pennsylvania corporation engaged in business as a gas utility company in northern Pennsylvania. John H. Ware (Ware) is chairman of the board of North Penn. The North Penn Plan is a profit-sharing plan which was established on June 1, 1956, and covers employees of North Penn. Under the terms of the plan, the trustee invests employee contributions and North Penn contributions in accordance with the employee's investment direction in an unsegregated fund invested solely in North Penn capital stock ($5 par value), an unsegregated fund invested in United States government securities, or an unsegregated fund of diversified corporate securities. The trustee for the North Penn Plan is Mellon Bank, N. A., of Pittsburgh, Pennsylvania. The North Penn Plan currently holds 85,171 shares (approximately 19 percent of the total number of shares) of North Penn stock. There are approximately 197 employees currently participating in the North Penn Plan, and 125 of these would be affected by the transaction for which the proposed exemption is pending.

2. On April 3, 1969, Ware, members of his family, and other persons associated with Ware acquired from the Kewanee Oil Company (Kewanee) in the aggregate 257,478 shares of the 450,000 outstanding shares of North Penn stock. The acquisition was approved by the Securities and Exchange Commission (SEC) in an order dated March 20, 1969, In the Matter of John H. Ware, File No. 70-4709, Holding Company Act Release No. 16319 (hereinafter referred to as the "1969 Order"). The 1969 Order stated that in the event Ware and his associates did purchase the North Penn stock from Kewanee, Ware would eliminate the publicly-held minority interest in North Penn within two years after the date of such purchase unless the SEC should order an extension of time upon application for good cause.

3. Ware is also the president, a director and the majority shareholder of Penn Fuel Gas, Inc. (Penn Fuel Gas), a Pennsylvania corporation which is a holding company exempt from the provisions of the Public Utility Holding Company Act of 1935 by reason of section 3(a)(1) of that Act. The Penco Plan is a profit-sharing plan covering employees of Penn Fuel Gas. The Penco Plan was established on January 1, 1961, and its present terms have been effective since January 1, 1971. The trustees of the plan have sole discretion in investing the sum of the employee contributions and Penn Fuel's contributions. The trustees of the Penco Plan are John H. Van Dorpe, Edward P. Farber, and Ware. The Penco Plan holds 8,637 shares (approximately 1.9 percent) of the total number of shares of North Penn stock. There are approximately 170 employees currently participating in the Penco Plan who would be affected by the transaction for which the proposed exemption is pending.

4. On December 30, 1971, Penn Fuel Gas and Ware filed an application with the SEC setting forth a reorganization plan under section 11(e) of the Public Utility Holding Company Act of 1935 designed to comply with the requirements of the 1969 Order. Under this plan, a new public utility holding company, Penn Fuel System, Inc., would be formed to satisfy the 1969 Order to acquire 100 percent of the outstanding stock in North Penn, thereby eliminating all outstanding minority interests in North Penn. Penn Fuel System would also acquire 88-93 percent of the outstanding common shares of Penn Fuel Gas.

5. According to the reorganization plan, Penn Fuel System is to acquire 207,000 shares of common stock of North Penn held by Ware and his associates in exchange for 227,700 shares of common stock in Penn Fuel System. Penn Fuel System is also to acquire all other outstanding shares of North Penn stock for cash and 5 year installment notes of Penn Fuel System, bearing interest at the rate of 10 percent per annum, on the basis of $3.10 in cash and $15.40 principal amount of Penn Fuel System notes for each share of North Penn stock. Penn Fuel System will also acquire between 304,237 and 338,731 shares of Penn Fuel Gas common stock from Ware and his associates by issuing to them Penn Fuel System stock for their Penn Fuel Gas common stock on a share-for-share basis.

6. The acquisition price for the outstanding North Penn stock held by the plans was arrived at in arm's-length negotiations between Ware and Penn Fuel Gas on the one hand and representatives of certain of the minority interests in North Penn stock on the other. These representatives included independent counsel for the Administrative Committee of the North Penn Plan, counsel for a New York investment banking firm that had been principal market-maker for the North Penn stock and holds approximately 2,900 shares, and counsel for individual holders of approximately 2,300 additional shares.

7. Notice of the reorganization plan was given to interested parties by the SEC and the U.S. District Court for the Eastern District of Pennsylvania, and all interested persons had an opportunity to present their views before both the SEC and the Court. In addition, hearings with respect to the reorganization plan were held before the SEC and the U.S. District Court.

In an order dated November 20, 1975 (Holding Company Act Release No. 19254), the SEC found that the reorganization plan described in the application filed with the SEC, as amended, was fair and equitable to all parties affected thereby. The United States District Court for the Eastern District of Pennsylvania approved the SEC order on February 2, 1976.

9. According to the terms of the reorganization plan, it is to become effective on the tenth full business day following the later of (1) its approval by the U.S. District Court for the Eastern District of Pennsylvania and (2) the first date on which all of four enumerated conditions have been fulfilled. One of these conditions precedent is the receipt of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code. Having received approval for the reorganization plan from the U.S. District Court for the Eastern District of Pennsylvania, the applicants now seek an exemption to permit the exchange of stock and notes between the two plans and Penn Fuel System. The exemption is requested to permit the parties to comply with the order of the SEC to eliminate the minority shareholders of North Penn stock.

10. If the reorganization plan is approved, the North Penn Plan will be amended so that contributions would be invested only in the unsegregated investment funds of U.S. government securities or diversified corporate securities, and the fund for investment in North Penn capital stock will be liquidated as the Penn Fuel System notes mature.

11. In order to obtain a price for the purpose of market evaluation of North Penn stock, the trustee of the North Penn Plan contacted Tweedy, Brown & Knapp, a brokerage firm which specializes in certain traded utilities stocks, in-

cluding North Penn stock. On September 16, 1975, the trustee of the North Penn Plan was informed by Tweedy, Brown & Knapp that, in their opinion, a fair market value for the North Penn stock would be $14 per share.

12. The trustees of the Penco Plan have no information as to the present market value of North Penn stock. Moody's Public Utility Manual for 1975 gives a price range of 10½ to 12 for 1974, the year in which the exchange price of $18.50 per share, which was subsequently approved by the SEC, was negotiated.

13. Approximately 33 percent of the total aggregate principal amount of the notes will be held by the North Penn Plan for the accounts of individuals. The notes will represent approximately 56.57 percent of the assets of the North Penn Plan.

14. Approximately 3.55 percent of the total aggregate principal amount of the notes will be issued to the Penco Plan. The notes will represent approximately 21 percent of the assets of the Penco Plan.

15. The Administrative Committee of the North Penn Plan will send a letter by first class mail within 10 days of the date of publication of this notice of pendency to the approximately 125 participants affected by the transaction informing them of the pending application before the Service and the Department. This notice of pendency will be included in such letter, and the recipients of such letter will be informed of their right to comment on the pending exemption. A copy of the letter and this notice of pendency will also be mailed to the AFL–CIO Brotherhood of Natural Gas Workers Maintenance Mill-Wright Local Union No. 2999, which represents 75 out of the 125 participants who will be affected.

16. The Administrative Committee of the Penco Plan will send a letter by first class mail within 10 days of the date of publication of this notice of pendency to the approximately 170 participants affected by the transaction informing them of the pending application before the Service and the Department. This notice of pendency will be included in such letter, and the recipients of such letter will be informed of their right to comment on the pending exemption.

General information. The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with subsection (a)(1)(B) of section 404 of the Act, nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The pending exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code or section 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Service and the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The pending exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is the subject of an exemption is not dispositive of whether the transaction would have been a prohibited transaction in the absence of such exemption or, though it would have been a prohibited transaction, is exempt by operation of a statutory or other exemption or a transitional rule.

Pursuant to section 4975(c)(2) of the Code and section 408(a) of the Act, the Service and the Department are required to offer an opportunity for a public hearing where a pending exemption relates to section 4975(c)(1)(E) or (F) of the Code and section 406(b) of the Act. Any interested person may submit a written request that a hearing be held relating to the requested exemption. Such written request must be received by the Service on or before January 31, 1977, and should state the reasons for such person's request for a hearing and the nature of such person's interest in the pending exemption.

All interested persons are also invited to submit written comments on the requested exemption contained herein. In order to receive consideration, such comments must be received by the Service on or before January 31, 1977.

All written comments and all requests for a hearing (preferably six copies) should be addressed to Internal Revenue Service, 111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: E:EP:PT (D–150; D–381). The application for exemption referred to herein, all comments relating thereto, and all requests for a hearing will be open to public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and at the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Pending exemption. Based upon the applications hereinabove described, the Service and the Department have under consideration the granting of the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722, and in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975) so that the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code and the restrictions of sections 406(a), 406(b)(1) and (2), and 407(a) of the Act shall not apply to the exchange by the North Penn and Penco Plans of North Penn stock for cash and notes of Penn Fuel System pursuant to the reorganization plan approved by the SEC on November 20, 1975 (Holding Company Act Release No. 19254) and by the U.S. District Court for the Eastern District of Pennsylvania on February 2, 1976.

The pending exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 13th day of December 1976.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.
WILLIAM J. CHADWICK,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc.76-37227 Filed 12-20-76;8:45 am]

federal register

TUESDAY, DECEMBER 21, 1976

PART V:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

■

SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES

Waiver of Federal Child Day Care Staffing Standards: Family Planning Services; Comprehensive Services to Drug and Alcohol Abusers; Group Determination of Eligibility; and Additional Allotments to States

The Administrator of the Social and Rehabilitation Service, with the approval of the Secretary of the Department of Health, Education, and Welfare, hereby amends the title XX social services regulations which were published in the FEDERAL REGISTER (40 FR 27352), on June 27, 1975. When the title XX proposed amendments, issued August 26, 1976 (41 FR 36156), are published in final form, they will incorporate these amendments. If subsequent public comments on these amendments indicate that modification of them is desirable, the changes will be issued as amendments to the regulation.

The bases for the present amendments are: (1) The provisions of Pub. L. 94–401 which was signed by the President on September 7, 1976; and (2) the desire of the Department to give the States maximum flexibility where the law is silent or non-specific.

The purpose is to codify in the Code of Federal Regulations the statutory requirements of the law. Most of the codification is a literal reflection of these requirements. Where the law is silent or non-specific, States are given the maximum flexibility—for example: (1) States may establish their own criteria for not finding it feasible to use a child day care facility which meets Federal staffing standards (§ 228.42(c)(2)); and (2) States are not required to take applications from persons whose eligibility has been determined on a group basis (§ 228.60(e)(2)).

PUBLIC LAW 94–401:

1. Makes Federal financial participation available in expenditures for day care services provided to children from 6 weeks to 6 years of age in out-of-home facilities even if such facilities do not meet Federal staffing standards, provided they do meet other specified staffing standards;

2. Requires States, in applying Federal staffing standards to family day care homes, to count the operator's own children only when they are under 6 years of age;

3. Exempts comprehensive rehabilitation services (including initial detoxification) provided to drug and alcohol abusers from certain limitations applicable to services provided to other individuals. These limitations pertain to medical services, room and board, and provision of services by institutional staff. The law also imposes special confidentiality requirements for services provided to drug and alcohol abusers.

4. Makes family planning a "universal" service, that is, one which States may provide to individuals regardless of their income;

5. Allows States to determine eligibility on a group basis for any service except day care services for non-migrant children; and

6. Permits States, under certain conditions, to waive Federal staffing standards in day care centers and group day care homes which serve few title XX children.

The first five provisions are effective on October 1, 1975, the begining date of the title XX services program. The sixth provision is effective on September 7, 1976, the date of enactment of Pub. L. 94–401.

The first three changes are effective only through September 30, 1977; the last three are permanent. (The first and third changes were previously temporarily in effect from October 1, 1975 through January 31, 1976, under Pub. L. 94–120.)

The law also provides for:

7. Additional allotments of funds to States: $40 million for the transition quarter (July 1, 1976 through September 30, 1976), and $200 million for Fiscal Year 1977; and

8. One hundred percent Federal funding for child day care services provided from October 1, 1976 through September 30, 1977, and for State grants to public, nonprofit private, and proprietary child day care providers to help them employ welfare recipients in jobs related to child day care services (from September 7, 1976 through September 30, 1977).

The changes in the regulations to codify all the provisions of Pub. L. 94–401 are summarized as follows:

Section 228.24 "Individuals to be served" is revised to add a paragraph requiring that if States are determining eligibility on a group basis they must describe in their services plans any specific conditions or characteristics, other than income, that must be met or that individuals must have in order to establish membership in a target group. The purpose of this requirement is to enable individuals to know if they might qualify for the particular service for which eligibility is to be established on a group basis.

Section 228.26 "Services" is revised to require inclusion in the services plan of the same information on the particular services available to individuals whose eligibility is determined on a group basis as is required on other services in the plan. This revision serves as a reminder to States to include in their services plans the necessary information about services available to individuals on the basis of group eligibility determinations.

A new paragraph (f) in § 228.26 requires the State to identify in its services plan where in its organizational structure it has placed authority: (1) to determine that it is not feasible for the State to furnish child day care in a day care center or group day care home which complies with Federal staffing standards; and (2) to furnish child day care by granting a waiver of otherwise applicable Federal staffing standards in a day care center or group day care home which serves few title XX funded children and meets applicable State staffing standards (see § 228.42(c)(2)).

Section 228.29 "Program coordination and utilization" is revised to require that the annual services plan describe the extent to which the State utilizes grants and otherwise encourages child day care providers under contract to employ AFDC recipients. This serves to tie the new provision for grants to employ AFDC recipients with the existing requirement that the State describe how the planning and the provision of services will be coordinated with title IV–A (AFDC). It also emphasizes the intent of the legislation that to the maximum extent feasible States utilize funds available under the additional allotments to increase the employment of welfare recipients in jobs related to child day care.

Section 228.35 "Amendments to final services plan" is revised to add instructions to the States on how to amend their services plans to benefit from the provisions which allow FFP (retroactive to October 1, 1975) in expenditures for the provision of family planning services without regard to income and for a service provided on the basis of group determination of eligibility.

Sections 228.40 "Minor medical and remedial care" and 228.41 "Room or board" are revised to specify how some of the limitations on medical and remedial care and room or board are not applicable to services for drug and alcohol abusers between October 1, 1975 and October 1, 1977. There is FFP: (1) When these components are used in the initial detoxification of such individuals for up to 7 days and the detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to them; and (2) when the entire rehabilitation process (rather than a particular service) is the basis for making the test for integral but subordinate.

Section 228.42 "Child care standards" is revised to implement the three policies on child day care staffing standards set forth in the statute. The two policies temporarily in effect between October 1, 1975 and October 1, 1977 are: (1) FFP is available in expenditures for child day care services for children 6 weeks of age to 6 years of age in day care centers and group day care homes which do not meet Federal staffing standards but do meet State or other specified standards; and (2) in applying Federal staffing standards, States are not to count the children of the operator of a family day care home unless such children are under 6 years of age.

The third, and permanent, policy specifies that when States do not find it feasible to furnish child day care in out-of-home facilities which comply with Federal staffing standards, they may furnish such care in day care centers or group day care homes which (1) provide day care for few title XX children of any age (not more than 20 percent of the total in a group day care home; not more than 5 children or 20 percent, whichever is lower, of the children in a center); and (2) meet applicable State staffing standards.

Section 228.44 "Services to individuals in institutions" is revised to add a para-

graph noting that there is FFP for initial detoxification of drug and alcohol abusers for up to 7 days when the detoxification is integral (but not subordinate) to further provision of other title XX services even though: (1) Hospital or other institutional staff provide the detoxification services to resident drug and alcohol abusers; and (2) such detoxification services include inherent or intrinsic responsibilities of the facility where they are provided. (Ordinarily, there would be no FFP for title XX services provided by hospital or institutional staff, or for services which are considered inherent or intrinsic responsibilities of a hospital or institution.)

A new § 228.48, entitled "Confidentiality regarding services to drug and alcohol abusers," has been added to make clear that the regulations in 42 CFR Part 2 are applicable to these services. This carries out the directive in Pub. L. 94-401 that the confidentiality provisions of section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended, are to be applied in providing services to drug and alcohol abusers under title XX. These confidentiality provisions are implemented by 42 CFR Part 2.

Section 228.51 "Matching rates" is revised to specify that FFP is available at 100 percent for expenditures during fiscal year 1977 for up to the State's share of its allocation of $200 million for the provision of child day care services and for grants to qualified child day care providers to employ welfare recipients (employed on or after September 7, 1976 through September 30, 1977). These additional funds, as well as $40 million made available during the transition period, are also available for grants at 100 percent matching. The purpose of the additional funds is to encourage States to the maximum extent feasible to promote the employment of AFDC recipients in jobs related to child care services. The section also specifies the kinds of expenditures relative to child day care services which are subject to 100 percent FFP: (1) In-home and out-of-home child day care services which meet certain conditions; and (2) staff activities in direct support of title XX child day care services, such as licensing, monitoring, and staff training. States and provider agencies have requested that the regulation be explicit on this point.

Section 228.52 "Allotments to States" is revised to specify: (1) How the additional amount of $240 million is allotted to the States (on the basis of population); and (2) how the State's additional allotment will be paid (the lesser of the amount of the State's additional allotment or the amount of actual expenditures incurred by the State for the provision of child day care services and for grants to child day care providers for the employment of welfare recipients).

Section 228.55 has been vacated and its contents, a description of family planning services under title XX, moved to § 228.63, newly titled "Family planning services." The new section also notes that States may provide family planning services without regard to income. This shift brings together all the services that may be provided without regard to income. The cross-reference in § 228.26(c) is corrected accordingly.

Pub. L. 93-647 required that an amount equal to one-half of the Federal funds paid a State to reimburse it for expenses incurred in its title XX program must be spent for services to recipients of AFDC, SSI or Medicaid and to other specified individuals. This is known as the "Fifty Percent Rule." Section 228.56 is revised to specify that in meeting the requirements of the "Fifty Percent Rule": (1) States may, in lieu of accounting for the status of each person receiving a service on the basis of group eligibility, use generally accepted statistical sampling procedures; (2) regarding services to persons who receive any of the three services which may be provided without regard to income, States may use any appropriate method, including generally accepted statistical sampling procedures or allocation of costs to the services provided these persons in the same ratio as the known cost of all other services distributed under the 50 percent rule; and (3) States shall deem that grants to child day care providers (to employ welfare recipients) are expenditures for child day care services made on behalf of AFDC recipients.

Section 228.60 "Persons eligible" is revised and expanded: (1) To include family planning as a service available without regard to income; and (2) to eliminate the need for written applications from persons whose eligibility is determined on a group basis. When the State has set conditions to be met or characteristics which an individual must have to receive a service on the basis of group determination of eligibility, the State must, through its intake process, elicit the information necessary to determine if the individual meets the conditions or has the characteristics specified for membership in the group. But when it is solely the nature of the service and/or the location where it is provided that has led the State to conclude that substantially all of the persons who would apply for that service in that location are members of families with gross monthly incomes of 90 percent or less of the State's median income, adjusted for family size, no specific inquiry need be made of those who come for service.

Section 228.61 "Determination and redetermination of eligibility" is expanded:

(1) To list the factors States must consider in determining eligibility on a group basis (nature of the service provided, where it is provided, characteristics of community where it is provided conditions, other than income, of eligibility for the service) and which lead it to conclude that substantially all the persons who receive the service are members of families with monthly gross income of no more than 90 percent of the State's median income, adjusted for family size;

(2) To define "substantially all" as no less than 75 percent of the persons receiving a service on the basis of group eligibility;

(3) To state that a mandatory fee is not applicable to persons whose eligibility is determined on a group basis; and

(4) To convey that the group method of determining eligibility may be used for any service except child day care services for non-migrant children.

Section 228.61 also specifies that redetermination of eligibility of persons receiving a service on a group eligibility basis is necessary only when the State has set conditions or characteristics (which are apt to change over time) as a condition precedent to the receipt of a service on a group eligibility basis.

When these conditions or characteristics are of a changeable nature (place of residence, marital status, presence of children), the State must ascertain not less frequently than every 6 months that individuals in the group still meet the conditions or have the characteristics for membership in the group. However, when the specified conditions or characteristics established by the State for membership in the group are not apt to change substantially (for instance, a physical disability), the State need ascertain only once a year whether these individuals still meet the conditions or have the characteristics for membership in the group.

A new paragraph in § 228.61 is addressed to validating the "substantially all" basis which the State has used in establishing a group for the provision of a service. All such groups are subject to the test of whether at least 75 percent of those receiving a service on the basis of group eligibility are members of families with gross monthly incomes of no more than 90 percent of the State's median income, adjusted for family size. The State must conduct the test within 6 months after beginning provision of a service to a group, and thereafter shall apply the test not less frequently than once a year for the same group. Validations may be conducted on a sample basis. If the State is retroactively claiming expenditures for services on a group determination of eligibility basis, as permitted back to October 1, 1975, it must make the validation within 3 months of the promulgation of these regulations in the FEDERAL REGISTER.

When the State finds that less than 75 percent of the persons in the State receiving a particular service on the basis of group eligibility are members of families with monthly gross incomes of 90 percent or less of the State's median income, adjusted for family size, the State shall, within 75 days of the finding:

(1) Discontinue claiming FFP in the costs of services provided on a group eligibility basis for the group which did not meet the "substantially all" test; and

(2) Amend the State's services plan to either delete the service, or provide it on the basis of individual determination of eligibility, or on the basis of group determination of eligibility if the State by modifying the group in some way, has

a reasonable basis on which to conclude that, with such modification of the group, at least 75 percent of the individuals served would then be members of families whose gross monthly incomes would be no higher than the specified level. FFP would again be available in accordance with how the plan was amended.

The content of paragraph (c) ("Eligibility phase-in (IV–A and VI)," is deleted as obsolete because States now have the option to use the group method of determining eligibility. Five paragraphs in § 228.61 are recoded because of the insertion or deletion of material.

"Substantially all" is defined in § 228.61 as no less than 75 percent of the persons provided a service on the basis of group eligibility. SRS felt an obligation to define the term "substantially all" because (1) it is too vague to have operational utility, and (2) in the past, States have indicated difficulties in operating their programs when such imprecise terms have been used. Based on past experience and informal conversations with States, SRS concluded that the States need a fixed numerical guideline. Since there is no realistic basis for a scientific determination, SRS made a judgment about the intent of Congress in this regard and decided that 75 percent is a reasonable figure. Arbitrary as it may seem, the percentage chosen was decided upon because it is near enough to 100 percent to qualify as "substantially all" in the minds of many people, and because it is close to one of the percent figures mentioned by members of Congress when the "substantially all" aspect of H.R. 12455 (later Pub. L. 94–401) was under discussion. SRS considers that 75 percent is reasonable because it is not so high as to make group eligibility infeasible but yet high enough to carry out what SRS believes is the intent of the law. However, SRS welcomes reaction to its definition of "substantially all."

Subpart J has been added to describe the conditions under which States may make grants to "qualified" public and private child day care providers to employ "eligible" welfare recipients.

Section 228.100 provides definitions of "qualified" day care providers and "eligible" welfare recipients. These definitions derive directly from the statute which (1) specifies that a "qualified" provider is one who provides care for title XX partly or totally funded children who regularly constitute at least 20 percent of the total number of children served in his facility, and (2) requires that "eligible" welfare recipients be defined in accordance with the Internal Revenue Code of 1954.

Section 228.101 sets forth the conditions for Federal funding at 100 percent: (1) FFP is available for salaries paid under grants which States make to qualified public and private child day care providers under contract for the employment of eligible welfare recipients from September 7, 1976 through September 30, 1977; (2) grants may not exceed $5,000 per year to public and non-profit private child day care providers for each welfare recipient employed per year, and may not exceed $4,000 per year to proprietary providers for each welfare recipient employed per year (the Internal Revenue Code of 1954 provides a tax credit of up to $1,000 per year per recipient. The tax credit equals 20 percent of the wages to a recipient to the extent that a provider is not specifically reimbursed for such wages.); (3) The grants which States make are subject to the letter of credit procedure established by the U.S. Treasury; and (4) States must submit statistical and financial reports to the Department on the recipients hired under the grants.

Even with 100 percent funding available for grants and child day care services, SRS assumes that States will continue to exercise their responsibility to negotiate reasonable rates for child day care services.

Section 228.102 specifies that: (1) States may include payment for the salaries paid by providers to recipients for the 30-day full-time, continuous employment period needed to make recipients "eligible" for hire under the grants; (2) if, within the transition quarter, States pay for salaries for any part of such 30-day, full-time continuous employment period which occurs after September 7, 1976 but within the transition quarter, such salary expenditures may be charged to the State's new allotment for the transition quarter; and (3) any such salary expenditures made on or after October 1, 1976 and through September 30, 1977 are chargeable to the State's new allotment for the Federal 1977 fiscal year.

Various groups interested in the administration of the title XX program have communicated to the Department their interest in rapidly adjusting the State and local operation of that program to take advantage of the increased availability of Federal matching under Pub. L. 94–401. In view of this, the Department believes that there is a need to quickly establish a final Federal interpretation of that law. Most of the changes herein are simply restatements of the statute. In those cases where the Department has made policy choices, the choices made are believed to correspond to the wishes expressed by most interested parties. In addition, as indicated above, the Department believes it is important to establish legally effective regulations as quickly as possible so that the States will know what adjustments are necessary to qualify for the increased Federal matching. Accordingly, the Department believes there exists good cause to dispense with notice of proposed rule making. However, consideration will be given to any written comments, suggestions or objection received by the Administrator, Social and Rehabilitation Service, P.O. Box 2382, Washington, D.C. 20013, on or before February 4, 1977. If changes are necessitated by these comments, they will be issued promptly as amendments to the regulation.

In commenting, please refer to PSA–66. Organizations and agencies are requested to send comments in duplicate. Comments will be available for public inspection in Room 5225 of the Department's offices at 330 C Street, S.W., Washington, D.C., beginning approximately two weeks after publication of this regulation in the FEDERAL REGISTER, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (area code 202–245–2950).

Answers to specific questions may be obtained by calling Mrs. Johnnie U. Brooks (area code 202–245–9415).

Part 228, Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. The Table of Contents is revised to amend Subparts D, E, and F, and to add a new Subpart J as follows:

* * * * *

Subpart D—Limitations: Services

228.39 General.
228.40 Minor medical and remedial care.
228.41 Room or board.
228.42 Child care standards.
228.43 Educational services.
228.44 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.
228.45 Special services provided by foster family homes.
228.46 Emergency shelter.
228.47 Cash payments for a service.
228.48 Confidentiality regarding services to drug and alcohol abusers.

Subpart E—Limitations: Financial

228.50 Services and individuals covered in the services plan.
228.51 Matching rates.
228.52 Allotments to States.
228.53 Public sources of State's share.
228.54 Private sources of State's share.
228.55 [Reserved]
228.56 Fifty Percent Rule.

Subpart F—Limitations; Individuals Served, Eligibility and Fees

228.60 Persons eligible.
228.61 Determination of eligibility.
228.62 Fees for services.
228.63 Family planning services.
228.64 Information and referral services.
228.65 Services directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults unable to protect their own interests.
228.66 Monthly gross income.

* * * * *

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

228.100 Definitions.
228.101 Conditions for Federal financial participation.
228.102 Claims for Federal financial participation.

Authority: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

2. Section 228.24 is amended by revising paragraph (a)(3) and adding a new paragraph (b) to read as follows:

§ 228.24 Individuals to be served.

(a) The services plan shall: * * *

(3) Specify if the State plans to offer any service defined in § 228.63, § 228.64 or § 228.65.

(b) If the State is determining eligibility on a group basis in accordance with § 228.61, the services plan shall so state and describe any specific conditions

or characteristics (other than income), that must be met or that individuals must have so that they will know if they might qualify to receive a particular service for which eligibility is determined on a group basis. Conditions or characteristics that may be used by the State as a basis for determining that a service is to be offered on a group eligibility basis may include one or more of the following: the nature of the service, characteristics of persons to receive the service (such as age, physical or mental condition, place of residence, single parenthood, common problems, etc.), location of the service site(s), nature of the community where the service will be provided, or other factors which lead the State to reasonably conclude that substantially all the persons to whom the services will be offered are members of families which have a monthly gross income of no more than 90 percent of the State's median income, adjusted for family size.

3. In § 228.26, paragraphs (a), and (c) are amended and (f) is added to read as follows:

§ 228.26 Services.

(a) Each service offered under the services plan, including the service which is available to individuals on the basis of group determination of eligibility, shall:

* * * * *

(c) Family planning services as described in § 228.63 to all AFDC recipients (including minors who can be considered sexually active) who request them shall be provided in the services plan if the State has an AFDC program. Failure to provide these services will reduce and jeopardize FFP to the State for its AFDC program.

* * * * *

(f) The State agency shall identify in its services plan the point in its organizational structure or the level of staff where it has placed authority:

(1) To make the decision for the State that it is not feasible to furnish child day care in a day care center or group day care home which complies with Federal staffing standards; and

(2) To furnish child day care by granting a waiver of otherwise applicable Federal staffing standards in a day care center or group day care home which serves few title XX funded children (see § 228.42(c)(2)) and meets applicable State staffing standards.

§ 228.29 Program coordination and utilization.

4. Section 228.29 is revised to add paragraph (c) to read as follows:

* * * * *

(c) The description shall also include the extent to which the title XX agency utilizes grants and otherwise encourages child day care providers under contract to employ AFDC recipients.

5. Section 228.35 is revised to add paragraph (c) to read as follows:

§ 228.35 Amendments to final services plan.

* * * * *

(c)(1) Notwithstanding paragraph (b), of this section, when a State amends its services plan so that it may provide family planning services without regard to income, or determine eligibility on a group basis for the provision of a service, the final amendment to the services plan may have a retroactive effective date of October 1, 1975 (or later, depending on when the State began providing the particular service specified in the amendment). FFP is available for a service which is the subject of an amendment made in accordance with this paragraph (c)(1), *Provided*, That the service was in the State's services plan when the service was delivered.

(2) The State shall publish the proposed and final amendments to the services plan, in accordance with paragraph (a) of this section, and specify therein the relevant retroactive dates.

6. Section 228.40 is revised to add paragraph (c) to read as follows:

§ 228.40 Minor medical and remedial care.

* * * * *

(c) Notwithstanding the requirement of paragraph (a) of this section, that medical or remedial care must be integral but subordinate to a particular service, FFP is available for medical or remedial care provided between October 1, 1975 and October 1, 1977 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When provided in the initial detoxification of such persons for up to 7 days, so long as such detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; and

(2) When integral but subordinate to the entire rehabilitative process (rather than a particular service), including but not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

7. Section 228.41 is revised to add paragraph (d) to read as follows:

§ 228.41 Room or board.

* * * * *

(d) Notwithstanding the requirement of paragraph (a) of this section, that room or board must be integral but subordinate to a particular service, FFP is available for room or board provided between October 1, 1975 and October 1, 1977 in a program of rehabilitative services to drug and alcohol abusers, under the following conditions:

(1) When provided in the initial detoxification of such persons for up to 7 days, so long as detoxification is integral (but not necessarily subordinate) to the further provision of other title XX services to drug and alcohol abusers; and

(2) When integral but subordinate to the entire rehabilitative process (rather than a particular service), including but not limited to initial detoxification, short-term residential services, and subsequent outpatient counseling and rehabilitative services, whether or not such a process involves more than one provider of services.

8. Section 228.42 is revised to add paragraphs (c) and (d) to read as follows:

§ 228.42 Child care standards.

* * * * *

(c) Notwithstanding the Federal staffing requirements for out-of-home child day care services set forth in paragraph (a)(2) of this section:

(1) FFP is available between October 1, 1975 and October 1, 1977 for title XX child day care services so long as day care centers and group day care homes providing day care services to children 6 weeks of age to 6 years of age apply staffing standards which:

(i) Are the State staffing standards which are in effect at the time the child day care services are provided;

(ii) Are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975; and

(iii) Are no lower, in the case of a particular day care center or group day care home, than the corresponding standards actually being met in such center or home on September 15, 1975.

(2)(i) When States find that it is not feasible to furnish day care (partly or totally funded under title XX) for children of any age in a day care center or group day care home that complies with Federal staffing standards, they may waive such standards otherwise applicable, and furnish day care services, if:

(A) A day care center or group day care home serves few title XX children (of the total number of children served at any given time in each such facility, not more than 5 of the children in a center, or 20 percent of them, whichever is lower; not more than 20 percent of the children in a group day care home); and

(B) Such day care center or group day care home complies with applicable State staffing standards.

(ii) States shall establish criteria against which to assess the non-feasibility of their use of a day care center or group day care home which complies with Federal staffing standards; and they shall maintain a record of the waiver for each facility in terms of these criteria.

(d) Between October 1, 1975 and October 1, 1977, in applying Federal staffing standards, States shall not count the children of the operator of a family day care home unless such children are under 6 years of age.

9. Section 228.44 is amended to add paragraph (b) to read as follows:

§ 228.44 Services to individuals living in hospitals, skilled nursing facilities, intermediate care facilities (including hospitals or facilities for mental diseases or for the mentally retarded), or prisons.

* * * * *

(b) Nothwithstanding the requirements of paragraph (a)(2) and (4) of this section, FFP is available between October 1, 1975 and October 1, 1977 for the cost of providing initial detoxification services for up to 7 days for drug and alcohol abusers when such detoxification is integral to the further provision of other title XX services, even though:

(1) Hospital or other institutional staff provide detoxification services to resident drug and alcohol abusers; and

(2) Such detoxification services include inherent or intrinsic responsibilities of the facility where they are provided.

10. A new section, § 228.48, is added to read as follows:

§ 228.48 Confidentiality regarding services to drug and alcohol abusers.

States providing services to drug and alcohol abusers shall safeguard information about such services and recipients by applying the provisions of section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (as amended by section 122(a) of Pub. L. 93–282), as implemented by regulations at 42 CFR Part 2.

11. Section 228.51 is amended to add paragraph (c) to read as follows:

§ 228.51 Matching rates.

* * * * *

(c) *One hundred percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate up to the State's share of the additional allotments described in § 228.52(c)(3). The purpose of the additional funds is to encourage States to the maximum extent they determine to be feasible to promote the employment of AFDC recipients in jobs related to day care services.

(1) During fiscal year 1977, 100 percent FFP is available for:

(i) Day care services provided to children in day care centers, group day care homes, and family day care homes, which are licensed by the State for child day care services and otherwise meet the requirements of § 228.42(a)(2) as modified by the provisions of § 228.42(c) and (d).

(ii) Day care services provided to children in their own homes in accordance with § 228.42(a)(1); and

(iii) Staff activities in direct support of the child day care services such as: licensing homes or facilities used by title XX children, monitoring title XX child care services delivery, and training staff in accordance with Subpart H of this Part.

(2) During the transition quarter (July 1, 1976 through September 30, 1976) and the 1977 fiscal year, 100 percent FFP is available for grants by States to child day care providers to employ welfare recipients, in accordance with Subpart J.

12. Section 228.52 is amended to add a paragraph (c)(3) to read as follows:

§ 228.52 Allotments to States.

* * * * *

(c) * * *

(3)(i) The basic allotment described in paragraph (c)(1) of this section shall be increased by an amount which bears the same ratio to $40 million for the transition quarter (July 1, 1976 through September 30, 1976) and to $200 million in the 1977 fiscal year as the population for such State bears to the population of all States. The amount of these additional allotments payable to each State shall be the lesser of:

(A) The amount of each additional allotment; or

(B) The amount of actual expenditures incurred for the provision of child day care services and for grants by States to child day care providers for the employment of welfare recipients.

§ 228.55 [Reserved]

13. Section 228.55 is deleted and reserved.

14. In § 228.56, paragraph (b), is revised to read as follows:

§ 228.56 Fifty Percent Rule.

* * * * *

(b) In accounting for costs of services to meet the requirements of paragraph (a) of this section:

(1) In lieu of accounting for the status of each person receiving a service on the basis of group determination of eligibility, States may use generally accepted statistical sampling procedures.

(2) Regarding services to persons who receive services without regard to income (family planning services, services to prevent or remedy abuse, neglect or exploitation of children and adults, and information and referral services), States may use any appropriate method, including generally accepted sampling procedures or allocation of costs to the services provided these persons in the same ratio as the known cost of all other services distributed for the 50 percent rule.

(3) States shall deem grants made by them to child day care providers for the employment of welfare recipients, to be expenditures for child day care services made on behalf of AFDC recipients.

15. In § 228.60, paragraph (d) is revised and paragraph (e)(2) is amended by adding subdivision (ii) as shown below. Subdivision (i) is published for clarity.

§ 228.60 Persons eligible.

* * * * *

(d) *Services without regard to income.* Notwithstanding paragraphs (a) and (b) of this section, family planning services under § 228.63, information or referral services under § 226.64 or services directed at the goal of preventing or remedying neglect, abuse, or exploitation of children or adults under § 228.65 may, if provided under the services plan, be provided to all individuals who need them.

(e) * * *

(2) * * *

(i) When protective services are provided without regard to income under conditions specified in § 228.65, a dated agency record that documents the circumstances of actual or potential abuse, neglect, or exploitation of a child or adult, may be considered an acceptable alternative to the written application for that individual.

(ii) When eligibility is determined on a group basis in accordance with § 228.61, no written application is necessary.

(A) However, if the State has established specific conditions (other than income) or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility, the State shall, in the intake process, elicit information necessary to determine whether an individual meets the specified conditions or has the characteristics for membership in the group (e.g.—if eligibility for homemaker services to teenage parents maintaining their own homes in public housing is determined on a group basis, the intake process shall elicit a statement regarding age, parenthood, address, and maintenance of one's own home).

(B) If the State has concluded solely on the basis of the nature of a service and/or the location where it will be provided (e.g.—recreational services in specified senior centers or day care services for migrant children), that substantially all of the individuals who would apply for the service are members of families with gross monthly incomes of 90 percent or less of the State's median income, adjusted for family size, no information need be elicited at intake.

16. § 228.61 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 228.61 Determination and redetermination of eligibility.

(a) *Methods of determining (or redetermining) eligibility.* (1) States may establish any method or methods, including a declaration method, for determining eligibility in accordance with § 228.60 and § 228.66.

(2)(i) States may determine eligibility on a group basis if, upon consideration of one or more of the following factors, with respect to a particular service, they can reasonably conclude without individual determination that substantially all members of the group who receive the particular service are members of families with monthly gross incomes of not more than 90 percent of the State's median income, adjusted for family size:

(A) The geographic area in which a particular service is provided;

(B) The characteristics of the community in which the service is provided;

(C) The nature of the service provided;

(D) The conditions, other than income, of eligibility to receive the service; or

(E) Other factors surrounding provision of the service.

(ii) "Substantially all" means that no less than 75 percent of the persons provided a service on the basis of group

eligibility determination shall be members of families whose gross monthly incomes are no more than 90 percent of the State's median income, adjusted for family size.

(iii) There are no mandatory fees for persons whose eligibility is determined on a group basis.

(iv) Group determination of eligibility may be used for any service except, that for child day care, it is limited to the children of migratory workers.

(3) States may use one method for determining eligibility for all services, categories of individuals and geographic areas, or they may use different methods for different services, different categories of individuals and different geographic areas.

(4) States shall have available for Federal review a written description of the method(s) they have established for determining and redetermining eligibility.

* * * * *

(c) *When redetermination shall be made.*

(1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:

(i) When required on the basis of information the agency has obtained about anticipated changes in the individual's situation;

(ii) Promptly, not to exceed 30 days, after information is obtained about changes which have occurred in the individual's circumstances that may make him ineligible; and

(iii) Periodically, but not less frequently than every 6 months.

(2) If the State has established specific conditions or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility (and, in accordance with § 228.60(e)(2)(ii)(A), has elicited information at intake that individuals applying for the service meet the conditions or have the characteristics for membership in the group), it shall, unless the characteristic is irreversible (such as being above a certain age), redetermine the eligibility of these individuals as follows:

(i) When the conditions or characteristics established by the State are apt to change in regard to an individual (such as place of residence, marital status, children living in the home), the State shall ascertain not less frequently than every 6 months whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group; or

(ii) When the conditions or characteristics established by the State are not apt to change substantially in regard to an individual (such as a physical disability), the State shall ascertain not less frequently than once a year whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group.

(iii) The State shall discontinue providing the service on the basis of group eligibility determination by the end of the month in which it finds persons who no longer meet the conditions or have the characteristics required for group membership.

(d) Validation of "substantially all" basis for establishing a group:

(1) Each group of persons receiving a service on the basis of group determination of eligibility shall be subject to a validation check of whether at least 75 percent of those receiving the service are members of families with gross monthly incomes of no more than 90 percent of the State's median income, adjusted for family size.

(2) States shall conduct their initial validation check not later than 6 months after they have started providing a service to individuals on the basis of group eligibility. (If a State claims expenditures for services on a group determination of eligibility basis retroactively, as permitted to October 1, 1975, the validation shall be made within 3 months of promulgation of these regulations in the FEDERAL REGISTER.)

(3) After the initial validation, States shall thereafter conduct such validations for the same group no less frequently than once a year.

(4) The validations may be conducted on a sample basis. States shall maintain a record of how the test was conducted, and document the process used and the findings.

(5) In order to determine whether at least 75 percent of the persons who receive a particular service on the basis of group eligibility are in families with the specified income level, States shall take into account the findings made on members of all groups that receive each particular service wherever provided in the State on the basis of group eligibility.

(6) If a State finds that *less* than 75 percent of the persons receiving a particular service on the basis of group eligibility meet the specified income standard, the State shall, within 75 days following such a finding:

(i) Discontinue claiming FFP for expenditures incurred for the service provided to persons in that particular group whose eligibility has been determined on a group basis;

(ii) Amend the State's services plan to either delete the service, or to provide a new basis for determination of eligibility to continue the service.

(iii) If the State decides to continue the service, FFP is available, in accordance with the amended services plan, for providing the service:

(A) On the basis of individual eligibility; or

(B) On the basis of group eligibility if the State changes the conditions or characteristics relative to the group and has a reasonable basis on which to conclude that with such modification, at least 75 percent of the individuals served would then be members of families with the specified monthly gross income.

* * * * *

17. Section 228.63 has been removed from "reserved" and newly titled. Paragraph (a) is new; paragraphs (b) and (c) are transferred from § 228.55.

§ 228.63 Family planning services.

(a) FFP is available in the cost of family planning services provided without regard to income.

(b) For purposes of this Part, family planning services means counseling, educational and medical services (including diagnosis, treatment, drugs, supplies, devices and related counseling furnished, prescribed by, or under the supervision of, a physician) to enable individuals of childbearing age (including minors) voluntarily to limit their family size or to space their children.

(c) Where a State authorizes sterilization as a family planning service, it must comply with the provisions of 45 CFR 205.35.

18. A new Subpart J is added to read as follows:

Subpart J—Grants to Child Day Care Providers To Employ Welfare Recipients

§ 228.100 Definitions.

For purposes of this Subpart:

(a) A "qualified" child day care provider is one in whose facility at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An "eligible" welfare recipient is, as defined in section 50B(g) of the Internal Revenue Code of 1954, one who meets all the following requirements:

(1) Has been certified by the State or local welfare department as being eligible for financial assistance for aid to families with dependent children (AFDC) and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired;

(2) Has been a full-time employee of the provider for a period in excess of 30 consecutive days;

(3) Has not displaced any other individual from employment by the provider; and

(4) Is not a migrant worker. (The Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the nature of the job requires the worker to travel from place to place over a short period of time.)

§ 228.101 Conditions for FFP.

From September 7, 1976 until October 1, 1977, FFP is available from additional allotments specified in § 228.52(c)(3) for salaries paid under grants which States make in accordance with this Subpart to qualified public, nonprofit private, and proprietary child day care providers under contract to the State agency, to employ eligible welfare recipients, as defined in § 228.100, *Provided*, That:

(a) The grants do not exceed:

(1) $5,000 to public and non-profit private providers for each recipient per year; and

(2) $4,000 to proprietary providers for each recipient per year. (The Internal Revenue Code of 1954 provides a tax credit of up to $1,000 per year per welfare recipient employed by proprietary

child day care providers (section 50A(a)(6)(B) of the Code) under an extension until October 1, 1977 of the credit for Federal welfare recipient employment incentive expenses to proprietary child day care providers (section 50B(a)(2)(B)). The tax credit, to a maximum of $1,000, equals 20 percent of the wages to a recipient to the extent that a provider is not specifically reimbursed for such wages. There is no aggregate tax credit limit for such child day care employers of recipients.)

(b) States make such grants on a time schedule that minimizes balances of Federal funds and in a manner consistent with Treasury Department Circular #1075 (revised) which promulgated the Letter of Credit system and was published in the FEDERAL REGISTER (38 FR 5242) on February 27, 1973.

(c) Pursuant to § 228.17, States submit statistical and financial reports on the AFDC recipients hired under these grants, in accordance with instructions issued by the Secretary.

§ 228.102 Claims for FFP.

(a) States may claim for salaries paid by child day care providers for the 30 days of full-time, continuous employment needed to make a recipient eligible, as defined in § 228.100(b).

(b) If a recipient starts employment with a provider on or after September 7, 1976, expenditures incurred for salaries for any part of the continuous 30-day employment which occurs after September 7, but within the transition quarter, are chargeable to the State's new allotment for the transition quarter.

(c) Any expenditures incurred on or after October 1, 1976 through September 30, 1977 for salaries under the grants for employment of welfare recipients are chargeable to the State's new allotment for the 1977 fiscal year.

Effective dates: These amendments are effective October 1, 1975 except as follows: additional allotments to States (§ 228.52) are available from July 1, 1976 through September 30, 1977; State grants to child day care providers (Subpart J) may be made on or after September 7, 1976 for use through September 30, 1977; and the option to waive Federal staffing Standards in out-of-home facilities with few title XX children (§ 228 42(c)(2)) is effective no earlier than September 7, 1976.

(Catalog of Federal Domestic Assistance Programs, No. 13.771, Social Services for Low-Income and Public Assistance Recipients.)

NOTE: The Social and Rehabilitation Service has determined that this document does not require preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 14, 1976.

NICHOLAS NORTON,
Acting Administrator,
Social and Rehabilitation Service.

Approved: December 16, 1976.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.76-37462 Filed 12-20-76;8:45 am]

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TUESDAY, DECEMBER 21, 1976

PART VI:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

LOW INCOME HOUSING

Operating Subsidy; Performance Funding System

Title 24—Housing and Urban Development

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

[Docket No. R-76-325]

PART 890—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

Subpart A—Performance Funding System

The Department gave notice on January 15, 1976, at 41 FR 2344 of certain amendments to the Interim Rule published April 16, 1975, at 40 FR 17008, and of its determination that the requirements, procedures and rules set forth in the Interim Rule should continue in effect for at least one full year prior to further revision to provide actual experience upon which to base decisions on the comments received regarding the Interim Rule.

The Department received more than 30 comments from interested parties both within and outside the Department in response to the Interim Rule. All comments were subsequently considered in light of the experience gained during the first full year of experience under the Performance Funding System (PFS). A discussion of the principal changes and of the more recurrent and significant comments is set forth below.

1. Sections 890.104 and 890.108(a) have been revised to establish the cost of a required biennial Independent Public Accountant (IPA) audit as a separate factor in the calculation of the amount of operating subsidy for which each PHA qualifies.

2. Section 890.105(a) has been revised to include two additional operating expenditure exclusions from the Base Year Expense Level so that the Base Year Expense Level will be more representative of a normal year's operational level.

3. Section 890.105(b) has revised the Formula for the computation of the Formula Expense Level. The Urban Institute, after analyzing the results of the first year's experience under PFS, has developed this revised Formula, which has superior statistical properties over those of the original Formula (i.e., the accuracy of predicting actual expenses is greater with the revised Formula). One of the factors used in the revised Formula is the HUD approved Fair Market Rent for an existing nonelevator two-bedroom unit developed for use in the Section 8 Housing Assistance Payments Program. Many of the public comments suggested that the inclusion of such a factor would strengthen the Formula, therefore, it was tested in the Formula, and adopted after it was proven that it did increase the accuracy of the computation of the Formula Expense Level. Another significant change has been implemented by the revised Formula in the method of calculating the average bedroom size. A value of one has been assigned to efficiency units, which is the same as the value assigned to one-bedroom units. In addition, the area served is to be measured by the population of the Standard Metropolitan Statistical Area (SMSA) rather than the population of the city.

4. Section 890.105(b) has also been revised to establish the new weights of the Formula which PHAs shall use to compute their Formula Expense Level for PHA fiscal years beginning October 1, 1976, January 1, 1977, April 1, 1977, and July 1, 1977.

5. Section 890.105(e) has been revised to establish a procedure by which PHA's eligible for Transition Funding (over range PHAs) in the PHA fiscal years beginning October 1, 1975, January 1, 1976, April 1, 1976 or July 1, 1976, may calculate a revised Allowable Expense Level for these years as a basis for calculation of subsidy eligibility for subsequent fiscal years. The revised Allowable Expense Level is calculated by computing a revised Formula Expense Level using the new Formula described in § 890.105(b). The revised Allowable Expense Level will be applicable to the above mentioned PHAs for fiscal years beginning April 1, 1976, July 1, 1976, October 1, 1976, and January 1, 1977, and then updated for all fiscal years thereafter. PHAs with fiscal years beginning April 1, 1976, and July 1, 1976, may be entitled to additional operating subsidy, and, if so, this additional subsidy will not be paid until HUD has established the total operating subsidy requirement for Federal fiscal year 1977, and has determined that there is sufficient funds available to the Department in 1977 to first pay 1977 obligations for subsidy. The justification for revising the Formula is discussed in paragraph 3 above.

6. Section 890.107 has been revised to redefine a "new project" for computation of the Utilities Expense Level. The definition of a "new project" has been expanded to cover any project, where there is utility consumption or a specific type of delivery for only a part of the Utilities Base Consumption Period (Base Period). This has been done in order to prevent distortion of the Base Period.

7. Section 890.108(b) has been revised to delete the category of non-dwelling units as a specific group to be considered under this section. Costs attributable to nondwelling units are considered in the amount established as the Allowable Expense Level by virtue of their inclusion in the Base Year Expense Level.

8. Section 890.108(d) has been added, which sets forth the provisions governing payments of operating subsidy in addition to that amount approvable under § 890.104 of these regulations. The additional operating subsidy, payable at the discretion of the Secretary, is limited to costs beyond the control of the PHA after the PHA has utilized all reasonably available resources of its own, and must be within the funds available to the Department.

9. Section 890.109(b)(1) has been revised to require the PHA to use the most current data available at the time of the submission of the requested operating budget to compute the estimated monthly dwelling rental charge instead of the monthly dwelling rental charge as shown on the rent roll prepared for the month which is six months before the beginning of the Requested Budget Year.

10. Section 890.109(b)(3) has been revised to permit the calculation of the average percentage of occupancy to reflect the removal of dwelling units from the Rent Roll which have been vacated for modernization purposes.

11. Section 890.110(c) has been revised to require each PHA that received operating subsidy, except those PHAs that received operating subsidy solely for IPA audits, to submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will be based upon the difference between actual utility expense and consumption and the estimates for each, will be submitted on the PHA's fiscal year basis.

12. Section 890.110(e) has been modified to permit the HUD Field Office to schedule the recovery of overpayments of operating subsidies in those cases where lump-sum recovery would cause a severe financial hardship on the PHA.

13. Section 890.111 has been expanded to clarify the use of operating subsidy payable under the PFS to augment the operating reserve. The title of the Section has been changed.

14. Section 890.114 has been added to set forth the requirement of the U.S. Housing Act of 1937 (USH Act), as amended by the Housing and Community Development Act of 1974, which provides that as a condition of eligibility for a PHA to receive operating subsidy, the aggregate rentals required to be paid in any year by families residing in the dwelling units shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families.

15. Section 890.115 has been added to set forth the requirement that PHAs receiving operating subsidy pursuant to the provisions of PFS, must be in compliance with section 207(A), Part II, of the Annual Contributions Contract, regarding the reexamination of tenants in occupancy.

The Department of Housing and Urban Development has determined that an Environmental Impact Statement is not required with respect to this Final Rule. The Finding of Inapplicability is available for inspection with the Rules Docket Clerk, Office of the Secretary, Department of Housing and Urban Development, Room 10141, 451 Seventh Street, SW., Washington, D.C.

Accordingly, Title 24, Part 890, Annual Contributions for Operating Subsidy, Subpart A, Performance Funding System is amended to read as follows:

Subpart A—Performance Funding System

Sec.

890.101 Purpose—General policy of Performance Funding System.
890.102 Definitions.
890.103 Applicability of Performance Funding System.
890.104 Determination of amount of Operating Subsidy under PFS.
890.105 Computation of Allowable Expense Level.
890.106 Transition Funding for excessively high-cost PHAs.

Sec.
890.107 Computation of Utilities Expense Level.
890.108 Other Costs.
890.109 Projected Operating Income Level.
890.110 Requests for adjustments.
890.111 Operating Reserves.
890.112 Operating Budget submission and approval.
890.113 Payments procedure for Operating Subsidy under PFS.
890.114 Payments of Operating Subsidy conditioned upon Certification of Rent-Income Ratio.
890.115 Payments of Operating Subsidy conditioned upon reexamination of Incomes of Families in Occupancy.

AUTHORITY: Sec. 9, United States Housing Act of 1937, (42 U.S.C. 1437g); sec. 201(b), Housing and Community Development Act of 1974, (42 U.S.C. 1437 note); sec. 7(d), Department of HUD Act, (42 U.S.C. 3535(d)).

Subpart A—Performance Funding System

§ 890.101 Purpose—General policy of Performance Funding System.

(a) *Implementation of section 9(a).* The purpose of this subpart is to establish standards and policies for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937, 42 U.S.C. 1437g. Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of low-income housing projects (operating subsidy). Section 9(a) further provides:

> For the purposes of making payments under this section, the Secretary shall establish standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and characteristics of the families served, or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project.

Pursuant to section 9(a), this subpart establishes standards for costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project. These standards, policies and procedures are called the Performance Funding System (PFS). The provisions of PFS are intended to recognize and give an incentive for efficient and economical management and to avoid the expenditure of Federal funds to compensate for excessive costs attributable to poor or inefficient management. PFS is intended to provide the incentive and financial discipline for excessively high-cost PHAs to improve their management efficiency. PFS includes provision for transition funding of additional operating subsidy for such PHAs to assist them in the transition to improved performance.

(b) *Background.* The HUD Act of 1969 initially authorized the payment of operating subsidy. The Conference Report (No. 91-740) submitted with the HUD Act of 1969 made it clear that Congress was "* * * deeply concerned over cases of lax management in many public housing projects which have led to high operating costs, deterioration of property and an intolerable environment for families who live there." The Senate Report on the HUD Appropriations Bill for 1972 expressed Congress' concern over "spiraling contributions payments." On November 22, 1972, the Department issued Circular HM 7475.12, "Subsidies for Operations: Low-Rent Public Housing Program." That Circular set forth the Interim Formula System for determination of the amount of operating subsidy payments. PFS replaced the Interim Formula System for PHA fiscal years commencing on and after April 1, 1975. PFS is the result of an extensive study and effort by HUD to develop a long-range system for the distribution of operating subsidy in accordance with section 9(a) of the United States Housing Act of 1937, as amended.

(c) *Overview of PFS.* (1) The Performance Funding System for the calculation of operating subsidy is designed to provide the amount of operating subsidy which would be needed for well-managed projects. That amount is determined by the difference between the projected expenses and projected operating income of the PHA, both computed in accordance with this Subpart A.

(2) Projected expenses, other than utilities and the expenses allowed under § 890.108 are determined in accordance with § 890.105 which provides for computation of the PHA's "Allowable Expense Level." The Allowable Expense Level is based upon the PHA's approved budget expense level during the year prior to its entering the PFS system. A PHA whose "Base Year Expense Level" is above the Allowable Expense Level will qualify for Transition Funding as provided in § 890.106.

(3) The projected Utilities Expense Level is computed separately, as provided in § 890.107, based upon the PHA's actual past level of consumption of utilities and based upon current rates.

(4) Projected operating income (primarily dwelling rental income) is computed in accordance with § 890.109. Dwelling rental income is projected based upon the rental charges shown in the PHA's rent rolls, increased by a trend factor (subject to updating) of three percent (3%), and multiplied by the PHA's estimated percentage of occupancy. In accordance with section 9(b) of the USH Act, a condition to receiving operating subsidy is that the aggregate rental as required to be charged in any year to families residing in dwelling units administered by a PHA receiving operating subsidy shall not be less than an amount equal to one-fifth of the sum of the incomes of such families. (See § 890.114.) Other operating income is estimated by the PHA subject to adjustment by HUD.

(5) Operating subsidy is then computed by subtracting projected income from projected expenses, and may be increased to include Transition Funding for qualifying PHAs.

§ 890.102 Definitions.

(a) *Allowable expense level.* The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 890.108) computed in accordance with § 890.105, which is used to compute the amount of operating subsidy.

(b) *Base year.* The PHA's fiscal year immediately preceding its first fiscal year under PFS.

(c) *Base year expense level.* The expense level (excluding Utilities, biennial audits and certain other items) for the Base Year, computed as provided in § 890.105(a).

(d) *Current budget year.* The fiscal year in which the PHA is currently operating.

(e) *Formula.* The revised formula derived from the actual expenses of high-performance PHAs which is used in PFS, as provided for in § 890.105, to determine the Formula Expense Level and the range of each PHA. HUD plans to update the Formula each year to reflect actual costs experienced by high-performance PHAs.

(f) *Formula expense level.* The per unit per month dollar amount of expenses (excluding utilities and audits) computed under the Formula, in accordance with § 890.105(b).

(g) *Interim formula.* The HUD system, which has been replaced by PFS, for determining the amount of operating subsidy which applied to PHA fiscal years which commenced on or after October 1, 1972, and prior to April 1, 1975.

(h) *HUD field office.* The HUD Area or Insuring Office which has been delegated authority under the United States Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located. The Denver Regional Office has been delegated authority to function as an Area Office for PHAs within its regional boundaries.

(i) *Local government wages inflation factor.* The percentage increase in local government wages and salaries for the area in which the PHA is located. This percentage will be supplied by HUD. HUD will compute the percentage amount on the basis of information furnished by the Department of Commerce. HUD anticipates that it will update the figures for the Local Government Wages Inflation Factor each year.

(j) *Operating budget.* The PHA's operating budget and all related documents, as required by HUD, to be submitted pursuant to the Annual Contributions Contract.

(k) *Project.* Each project under an Annual Contributions Contract to which PFS is applicable as provided in § 890.103(b).

(l) *Project units.* All dwelling units of a PHA's Projects.

(m) *Projected operating income level.* The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 890.109.

(n) *Range.* $10.31 below to $10.31 above the PHA's Formula Expense Level for the

Base Year. The dollar amount is subject to change from time to time by HUD in connection with updating of the Formula. The Range is used in connection with determination of Allowable Expense Level, as provided in § 890.105, qualification for transition funding, as provided in § 890.106, and requests for adjustments of the Base Year Expense Level under § 890.110 (a) and (b).

(o) *Requested budget year.* The budget year (fiscal year) of a PHA following the Current Budget Year.

(p) *Transition funding.* Funding for excessively high-cost PHAs as provided in § 890.106.

(q) *Unit months available.* Project Units multiplied by the number of months the Project Units are expected to be available for occupancy during a given PHA fiscal year. A unit is considered available for occupancy from the time the Project reaches the End of the Initial Operating Period (EIOP) until the time it is approved by HUD for nondwelling use or deprogrammed with HUD approval.

(r) *Utilities.* Electricity, gas, heating fuel, water and sewerage service.

(s) *Utilities expense level.* The per unit per month dollar amount of Utilities expense, computed as provided in § 890.107.

§ 890.103 Applicability of PFS.

(a) *Commencement of PFS.* PFS has been and will be utilized in determining the amounts of operating subsidy payable to PHAs starting with budget years commencing on or after April 1, 1975.

(b) *Projects covered.* PFS is applicable to all PHA-owned rental units under Annual Contributions Contracts. PFS applies to PHAs which have not received operating subsidy payments previously, but are eligible for such payments under PFS. PFS is not applicable to the section 23 Leased Housing Program, the section 23 Housing Assistance Payments Program, the section 8 Housing Assistance Payments Program, the Mutual-Help Program, or the Turnkey III or Turnkey IV Homeownership Opportunity Programs. PFS is not applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. Operating subsidy payments to these PHAs will be based upon Operating Budgets approved by HUD on a case-by-case basis.

§ 890.104 Determination of amount of operating subsidy under PFS.

The amount of operating subsidy for which each PHA is eligible shall be determined as follows: The Projected Operating Income Level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per unit per month dollar amounts, and must be multiplied by the Unit Months Available. Transition Funding, if applicable, and other costs as specified in § 890.108 are then added to this total in order to determine the total amount of operating subsidy for the Requested Budget Year, exclusive of consideration of the costs of biennial Independent Public Accountant (IPA) audits. As an independent operating subsidy eligibility factor, a PHA may receive operating subsidy in an amount, approved by HUD, equal to the actual or estimated cost of the IPA audit to be prorated to operations of the low-income housing program. See § 890.110 regarding adjustments.

§ 890.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of base year expense level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a cooperation Agreement even if PILOT is not included in the approved Operating Budget for the Base Year due to waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's Operating Budget for the Base Year approved by HUD except the following: (1) Utilities expense; (2) cost of biennial IPA audits; (3) adjustments applicable to budget years prior to the Base Year; (4) expenditures supported by supplemental subsidy payments applicable to budget years prior to the Base Year; (5) all other expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and (6) expenditures which were funded from a nonrecurring source of income.

In compliance with the above six exclusions, the PHA shall adjust the Allowable Expense Level by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some subsequent fiscal year of the PFS, the Allowable Expense Level shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the PHA does not effect these adjustments, the HUD Field Office shall.

(b) *Computation of formula expense level.* The PHA shall compute its Formula Expense Level in accordance with this subsection. The weights of the Formula and the Formula published in the Interim Rule on April 16, 1975, at 40 FR 17008 apply to PHA fiscal years beginning April 1, 1975, and July 1, 1975. The weights of the Formula published in the Final Rule on January 15, 1976, at 41 FR 2344 superseded the weights published in the Interim Rule and were applicable to PHA fiscal years beginning October 1, 1975, January 1, 1976, April 1, 1976 and July 1, 1976. The weights of the Formula and the Formula itself are subject to updating by HUD annually or at any other time. This updating will be accomplished by publication in the FEDERAL REGISTER, or by notification given directly to PHAs, whichever is considered appropriate. The Formula applicable to PHA budget years commencing October 1, 1976, and subsequent budget years; and PHA budget years which commenced April 1, 1976, and July 1, 1976, if these PHAs are eligible for Transition Funding for these two PHA fiscal years, subject to updating at any time, is as follows: (1) The population (in thousands) of the Standard Metropolitan Statistical Area (SMSA) of the PHA, multiplied by the weight .00228 (if the PHA exists outside of an SMSA, the population of the area served shall be used); (2) the logarithm to the base 10 of the average number of bedrooms per Project Unit, multiplied by the weight 54.93844; (3) the logarithm to the base 10 of the weighted average age of the ages of all the Projects (weighted by relative proportion of Project Units), multiplied by the weight 11.97794; (4) the logarithm to the base 10 of the HUD-supplied Fair Market Rent (March 29, 1976) for existing nonelevator two-bedroom units computed for the county in which the PHA is located, multiplied by the weight 32.47978; (5) the logarithm to the base 10 of the average height of the tallest building of each Project (weighted by relative proportion of Project Units in each Project) in stories, including only stories containing dwelling units or any space utilized by the PHA for project use which are not in a basement, multiplied by the weight 16.73764; (6) the HUD-supplied index figure for the relative operation costs of a sample of PHAs in the HUD Region, multiplied by the weight .46105. The Formula constant of $102.93610 is subtracted from the sum of subparagraphs (1) through (6) of this paragraph. The resulting amount is increased by the Local Government Wages Inflation Factor supplied by HUD. (Such increase is required under the current Formula to adjust for inflation between the Base Year and the previous year.)

(c) *Range.* The PHA's Range is the spread from $10.31 below to $10.31 above its Formula Expense Level for its Base Year. The figure $10.31 applies to PHAs until revised by HUD.

(d) *Computation of allowable expense level.* The PHA shall compute its Allowable Expense Level as follows:

(1) *Allowable expense level.* First Budget Year under PFS where Base Year Expense Level does not exceed top limit of Range. Every PHA whose Base Year Expense Level is below the top limit of the Range shall compute its Allowable Expense Level for the first Budget Year under PFS by adding the following to its Base Year Expense Level (prior to adjustment under § 890.110 (a) or (b)):

(i) Any increase approved by HUD in accordance with § 890.110 (a) or (b);

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level, and subdivisions (i) and (ii) of this subparagraph multiplied by the Local Government Wages Inflation Factor supplied by HUD.

(2) *Allowable expense level.* First budget year under PFS where Base Year Expense Level is above the top of the

Range. Every PHA whose Base Year Expense Level is above the top of the Range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to its top limit of the Range (not to its Base Year Expense Level, as in subparagraph (1), of this paragraph):

(i) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS.

(ii) The sum of the figure equal to the top limit of its Range and subdivision (i) of this subparagraph, multiplied by the Local Government Wages Inflation Factor supplied by HUD. (If the Base Year Expense Level is above the Allowable Expense Level, computed as provided above, the PHA may be eligible for Transition Funding under § 890.106.)

(3) *Allowable expense level.* Computation for budget years subsequent to first budget year under PFS. For each budget year subsequent to the first budget year under PFS, the Allowable Expense Level for the previous budget year, which includes the amount of the HUD-approved Increase of Base Year Expense Level, (reference: § 890.110), increased (or decreased) by the following:

(i) The increase (decrease) between the Formula Expense Level for the previous budget year and the Formula Expense Level for the Requested Budget Year.

(ii) The sum of the Allowable Expense Level for the previous budget year plus subdivision (i) of this subparagraph, multiplied by the Local Government Wages Inflation Factor supplied by HUD.

Example 1. Assume that the Allowable Expense Level for the first budget year under PFS (year 1) is $43.20.

Year 2. Assume that the Formula Expense Level of the PHA for the second budget year under PFS (Year 2) is $1.50 higher than the Formula Expense Level for Year 1. (NOTE that the weights or other aspects of the Formula may have been revised, in which case the revised Formula would be applied to both the Year 1 data and the Year 2 data to obtain difference; the $1.50 assumed difference would be due to changes in PHA data as to the Formula variables between Year 1 and Year 2). Assume that the applicable Local Government Wages Inflation Factor is 9 percent. The Allowable Expense Level for Year 2 is $48.72, computed as follows: $43.20 (Allowable Expense Level for Year 1, which is not changed regardless of any changes by HUD to the Formula used for the Year 2 computation) plus $1.50 (increase in Formula Expense Level between Year 1 and Year 2) plus $4.02 (9% Local Government Wages Inflation Factor times $44.70).

Year 3. Assume that the Formula Expense Level for Year 3 decreases $1.00 from that for Year 2 (due to changes in the PHA's data as to the Formula variables) and the applicable Local Government Wages Inflation Factor is 8%. The Allowable Expense Level for Year 3 is $51.54, computed as follows: $48.72 (Allowable Expense Level for Year 2) minus $1.00 (decrease in Formula Expense Level) plus $3.72 (8% × $47.72).

Year 4. Assume that the Formula Expense Level for Year 4 is $.50 above the Formula Expense Level for Year 3. Assume the applicable Local Government Wages Inflation Factor is 7%. The Allowable Expense Level for Year 4 is $55.68, computed as follows: $51.54 (Allowable Expense Level for Year 3) plus $.50 (increase in Formula Expense Level) plus $3.64 (7% × $52.04).

(4) *Adjustment of Allowable Expense Level.* For budget years subsequent to the first budget year under PFS, HUD may adjust the Allowable Expense Level of budget years subsequent to the first year under PFS pursuant to the provisions of § 890.105(a).

(e) *Reapplication of the Range Test for PHAs Eligible for Transition Funding.* Each PHA which is eligible for Transition Funding (over-range PHAs) in a PHA fiscal year beginning October 1, 1975, January 1, 1976, April 1, 1976, and July 1, 1976, may calculate a revised Formula Expense Level Range (Range) using the form prescribed by HUD. The purpose of revised Range test is to determine a revised Allowable Expense Level for PHA fiscal years beginning April 1, 1975, July 1, 1975, October 1, 1975 and January 1, 1976. The PHA may calculate a revised Formula Expense Level Range for the PHA fiscal years beginning April 1, 1975, July 1, 1975, October 1, 1975, and January 1, 1976, using the form prescribed by HUD. The PHA shall compute its revised Formula Expense Level in accordance with § 890.105(b), except that PHAs with fiscal years beginning April 1, 1975, and July 1, 1975, shall not apply the Local Government Wages Inflation Factor to arrive at the Formula Expense Level since the effect of the Factor has already been considered in the variable weights of the new Formula. To establish a revised Upper Limit of the Range, the PHA shall add $10.31 to the calculated revised Formula Expense Level. The revised Upper Limit of the Range is to be compared to the PHA's Base Year Expense Level, which was approved by HUD in conjunction with the PFS calculation applicable to the first year the PHA was under PFS. If the Base Year Expense Level is less than the revised Upper Limit of the Range, the Base Year Expense Level will be the revised Allowable Expense Level. If the Base Year Expense Level is greater than the revised Upper Limit of the Range, then the revised Allowable Expense Level will be the greater of (1) the previous Allowable Expense Level, or (2) the revised Upper Limit of the Range. The revised Allowable Expense Level, which in no case will be less than the previously approved Allowable Expense Level, will be used to compute the Allowable Expense Level for the PHA fiscal years beginning April 1, 1976, July 1, 1976, October 1, 1976, and January 1, 1977. To this Allowable Expense Level HUD may at its discretion add Transition Funding pursuant to § 890.106. The New Allowable Expense Level, plus Transition Funding, if applicable, will be used to calculate the PHA's operating subsidy eligibility under the PFS pursuant to § 890.104.

Example 2. Reapplication of the Range test and calculation of a revised Allowable Expense Level for a PHA with a fiscal year beginning April 1, 1976, or July 1, 1976. Assume that a PHA during the PHA fiscal year beginning April 1, 1975, or July 1, 1975, (i) served an area which had a population for the Standard Metropolitan Statistical Area of 157,550 people; (ii) had Project Units with an average of 3 bedrooms; (iii) had Project buildings whose age, weighted by relative number of units, was 11.5 years old; (iv) had a Fair Market Rent (March 29, 1976) for existing nonelevator two-bedroom units computed for the county in which the PHA is located of $175.00; (v) had Project buildings whose average height, weighted by relative proportion of Project Units in each Project, was 6 stories, and (vi) is in a HUD Region having a relative regional operating cost figure (supplied by HUD) of 98.89928. Assume the Local Government Wages Inflation Factor supplied by HUD is 7 percent.

The calculation of the revised Formula Expense Level for the PHA with the above characteristics for the fiscal year beginning April 1, 1975, or July 1, 1975, is computed as follows:

Operating factor	Hypothetical PHA data	Multiplier	Additive constant	Equation products
Population of SMSA (thousands)	158	0.00228		0.3602
Average number of bedrooms [1]	3.00	7.92683	2.43152	26.2120
Average age of project buildings [1]	11.50	.45099	7.51824	12.7046
Fair market rent [1]	175.00			72.8534
Average height of project buildings [1]	6.00	1.22275	5.68796	13.0245
Relative regional operating cost	98.89928	.46105		45.5975
Sum of equation products				170.7522
Less: Formula expense level equation constant				−102.9361
Formula expense level without inflation				67.8161
Increase by local government wages inflation factor (not used for retroactive application for April and July PHA's)				1.07
Formula expense level				72.5632

[1] Applying a predetermined multiplier and additive constant (which are supplied by HUD) to a PHA data value results in a convenient simplified method of determining the log base 10 of the data value multiplied by the equation weight. These calculations may be verified by determining the log base 10 of the data value and then multiplying by the weight given for the specific element in sec. 890.105(b).

Three examples showing the possible relationships of the Base Year Expense Level, the previous Allowable Expense Level, and the upper limit of the revised Formula Expense Level, and the determination of the revised Allowable Expense Level for a PHA with a fiscal year beginning (FYB) April 1, 1975, or July 1, 1975, are shown below:

Description	Example— A	B	C
1. Base year expense level for FYB Apr. 1, 1975, or July 1, 1975	$75.00	$85.00	$84.00
2. Previous allowable expense level for FYB Apr. 1, 1975, or July 1, 1975	72.00	76.00	80.00
3. Formula expense level without inflation computed above using revised PFS formula and PHA characteristics for FYB Apr. 1, 1975, or July 1, 1975	67.82	67.82	67.82
4. Formula expense level range factor	10.31	10.31	10.31
5. Upper limit of revised formula expense level range (3 plus 4)	78.13	78.13	78.13
6. Revised allowable expense level for FYB Apr. 1, 1975, or July 1, 1975:[1]			
(a) If base year expense level is less than the upper limit of the revised formula expense level range, enter the base year expense level[2]	75.00		
(b) If the base year expense level is greater than the upper limit of the revised formula expense level range, enter the previous allowable expense level or the revised allowable expense level, whichever is greater		[3] 78.13	[3] 80.00

[1] The revised allowable expense level computed for FYB Apr. 1, 1975, or July 1, 1975, shall be used to compute the allowable expense level for FYB Apr. 1, 1976, or July 1, 1976, pursuant to the provisions and example of sec. 890.105 (d)(3).
[2] In example A, although the upper limit of the revised formula expense level is greater than the base year expense level, the revised allowable expense level is limited to the base year expense level since no adjustment to the base year expense level is permitted under the provisions of sec. 890.105(e).
[3] Transition funding, if applicable, may be approved in addition, by HUD.

Example 3. Reapplication of the Range test and calculation of a revised Allowable Expense Level for a PHA with a fiscal year beginning (FYB) October 1, 1976, and January 1, 1977. Assume the same operating characteristics as in Example 2. The calculation of the revised Formula Expense Level for the fiscal year is the same as in Example 2. Three examples showing the possible relationships of the Base Year Expense Level, the previous Allowable Expense Level, and the upper limit of the revised Formula Expense Level, and the determination of the revised Allowable Expense Level for a PHA with a FYB October 1, 1975, or January 1, 1976, are shown below:

Description	Example— A	B	C
1. Base year expense level for FYB Oct. 1, 1975, or Jan. 1, 1976	$78.00	$86.00	$85.00
2. Previous allowable expense level for FYB Oct. 1, 1975, or Jan. 1, 1976	74.00	80.00	84.00
3. Formula expense level with inflation computed above using revised PFS formula and PHA characteristics for FYB Oct. 1, 1975, or Jan. 1, 1976	72.56	72.56	72.56
4. Formula expense level range factor	10.31	10.31	10.31
5. Upper limit of revised formula expense level range (3 plus 4)	82.87	82.87	82.87
6. Revised allowable expense level for FYB Oct. 1, 1975, or Jan. 1, 1976: [1]			
(a) If the base year expense level is less than the upper limit of the revised formula expense level range, enter the base year expense level	[2] 78.00		
(b) If the base year expense level is greater than the upper limit of the revised formula expense level, enter the previous allowable expense level or the revised allowable expense level, whichever is greater		[3] 82.87	[3] 84.00

[1] The revised allowable expense level computed for FYB Oct. 1, 1975, or Jan. 1, 1976, shall be used to compute the allowable expense level for FYB Oct. 1, 1976, or Jan. 1, 1977, pursuant to the provisions and example of sec. 890.105 (d)(3).
[2] Same as footnote 2 of example 2.
[3] Same as footnote 3 of example 2.

§ 890.106 Transition Funding for Excessively High-cost PHAs.

If a PHA's Base Year Expense Level exceeds its Allowable Expense Level, computed as provided in § 890.105, for any budget year under PFS, the PHA may be eligible for Transition Funding. Transition Funding shall be an amount not to exceed the difference between the Base Year Expense Level and the Allowable Expense Level for the Requested Budget Year, multiplied by the number of Unit Months Available. HUD shall have the right to discontinue payment of all or part of the Transition Funding in the event HUD at any time determines that the PHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 890.107 Computation of Utilities Expense Level.

(a) *Policy.* In recognition of the rapid rises which occur in Utilities costs and the wide diversity among PHAs as to types of Utilities services used as well as allocation of Utilities costs between PHAs and tenants, and the fact that Utilities rates charged by suppliers are beyond the control of the PHA, PFS treats Utilities expenses separately. Utilities expenses are excluded from the PHA's Allowable Expense Level. PFS computes the amount of operating subsidy based upon a calculated Utilities expense of each PHA. The allowable expense of Utilities is computed by multiplying current or approved future utilities rates by the amounts of average consumption (e.g., gallons of oil, kilowatts of electricity, etc.,) of the projects during a previous period. This method is intended to place a financial control on increases in consumption of utilities and thereby provide an incentive to conserve energy.

(b) *Utilities rates.* The current applicable rates in effect at the time the Operating Budget is submitted to HUD will be used as the Utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, as of the date of submission of the Operating Budget to HUD, approved and published rate increases for future implementation the future approved rates may be used as the Utilities rates for the entire Requested Budget Year. The use of these rates will simplify the calculation, and any operating subsidy funds advanced in excess of the actual Utilities cost will be recaptured by HUD pursuant to the required year-end Utilities adjustment. See § 890.110(c).

(c) *Computation of level of utilities consumption.* The amount of Utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year shall be equal to the average amount consumed per unit per month during a past period, computed as follows:

(1) Utilities Base Consumption Period (Base Period) method. The PHA shall determine the average amount of each of the Utilities consumed per unit per month during the Utilities Base Consumption Period (Base Period) which is the 36-month period ending six months prior to the first day of the Requested Budget Year.

(2) Temporary alternative method where data is not available for Utilities Base Consumption Period. If the PHA has not maintained or cannot recapture consumption data regarding a particular Utility or Utilities from its records for the 36-month Base Period, it shall submit to the HUD Field Office for approval consumption data for the twenty-four month period ending six months prior to the beginning of the Requested Budget Year, or, if this is not possible, the twelve-month period ending six months prior to the beginning of the Requested Budget Year. The PHA also shall submit a written explanation of the reasons why data for the Base Period is unavailable. If a PHA has not maintained or cannot recapture rate consumption data for the said twelve-month period, the dollar amount stated in paragraph (e) of this section, shall be used. Appropriate utility consumption records, satisfactory to HUD, shall be created and maintained by all PHAs so that a 36-month moving average utility consumption per unit per month under subparagraph (1) of this paragraph can be determined.

(3) Computation of utilities consumption levels for "new Projects."

(i) A "new Project" for the purpose of establishing the Base Period and the allowable Utilities Expense Level, is defined as either: A project of a new PHA or a project of an existing PHA which had not been in operation during the entire Base Period, or will enter management during the Requested Budget Year, or a project which, during the Base Period, has experienced: A conversion from one energy source to another; interruptible service; deprogrammed units; a switch from tenant-supplied to PHA-supplied utilities; or a switch from PHA-supplied to tenant-supplied utilities.

(ii) The actual consumption of projects having the unique situations described in subparagraph (3)(i) of this paragraph shall be adjusted so as not to distort the Base Period. Where there is consumption of a particular energy source for only a part of the Base Period or where there is a change in the allowance for tenant-supplied utilities during the Base Period, the consumption data related to these conditions either shall be eliminated or the total Base Period shall be adjusted to show a comparable situation. If the consumption is eliminated from the Base Period or the new Project will enter management during the Requested Budget Year, recognition

of a reasonable level of consumption will be considered as a separate element of the calculation of the allowable Utilities Expense Level. Specific instructions for each of the situations mentioned in subparagraphs (3)(i) and (3)(ii) of this paragraph will be a part of the HUD form prescribed to calculate the allowable Utilities Expense Level. Documentation supporting the adjustment(s) shall be submitted to the HUD Field Office along with the calculation of the allowable Utilities Expense Level.

(d) Computation of utilities expense level. The PHA's Utilities Expense Level for the Requested Budget Year shall be computed by multiplying the average utility consumption per unit per month for each Utility, determined as provided in paragraph (c) of this section, by the projected Utility rate determined as provided in paragraph (b) of this section.

(e) Utilities Expense Level where consumption data is unavailable. If a PHA has not maintained or cannot recapture data for the twelve-month period provided in paragraph (c)(2) of this section it shall request HUD Field Office approval to use the dollar amounts per unit per month, excluding Utilities Labor and Other Utilities Expenses shown on the latest year-end Statement of Operating Receipts and Expenditures, Form HUD-52599, but no subsequent adjustments regarding such Utility or Utilities will be approved for a budget year for which consumption is established based upon the said form.

(f) Adjustments. PHAs may request adjustments of Utilities in accordance with § 890.110.

§ 890.108 Other costs.

(a) Costs of Independent Public Accountant (IPA) audits. HUD requirements provide that the cost of the required biennial IPA audit shall be budgeted in either the PHA's Development Cost Budget or its annual Operating Budget, as appropriate. The Allowable Expense Level excludes the cost of IPA audits. However, the estimated cost of such audits, applicable to the operations of the low-income public housing program, is allowed in full in computing the amount of operating subsidy under § 890.104, above. Even though the PHA is not eligible to receive operating subsidy pursuant to the provisions of the PFS, it may be eligible to receive operating subsidy to offset the cost of the IPA audit chargeable to operations (the period after the Initial Operating Period). The eligibility to receive operating subsidy for IPA audits is considered independently of the PFS. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an IPA audit if such funds have been previously provided to the PHA in a prior fiscal year, nor to the extent that such funds will create residual receipts after provision for the operating reserve. Prior to engaging an IPA, the PHA must obtain the approval of the HUD Field Office. The PHA's estimate of cost of the IPA audit is subject to adjustment by HUD. If the PHA requires assistance in determining the amount of cost to be estimated, the HUD Field Office should be contacted.

(b) Units deprogrammed pursuant to HUD approval, but not yet disposed of. A deprogrammed unit is one which is permanently removed from the rent roll. This does not include units temporarily unavailable for occupancy because they are utilized for PHA related activities. Costs attributable to the deprogrammed units, as approved by HUD, may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until appropriate further action is taken. In the determination of the PFS operating subsidy, no Unit Months Available shall be included for the deprogrammed units. Deprogrammed units shall be listed by the PHA and supporting documentation regarding direct costs attributable to such units shall be included as a part of the operating budget in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the HUD Field Office should be contacted.

(c) Costs attributable to changes in Federal law or regulation. In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, and upon a determination that sufficient other funds are not available to cover the required expenditures, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d) Costs beyond the control of the PHA. Costs attributable to unique circumstances which are beyond the control of the PHA and were not reflected in the PHA's Base Year Expense Level may be considered for supplemental operating subsidy funding. Where costs were reflected in the PHA's Base Year Expense Level, but the rate of increase for such costs is greater than the prescribed PFS inflation rate(s), then the increase in excess of that provided by the inflation rate may be considered for supplemental operating subsidy funding. The PHA must submit to the HUD Field Office complete documentation relating to those cost items which it claims to be beyond its control. Such documentation shall not be submitted as a part of the requested operating budget, but shall be submitted separately as an addendum to the budget. The PHA also must show that these additional costs cannot be funded from its own resources. In the event that excess funds are available after making all payments approvable under § 890.104 of these regulations, HUD may, in HUD's sole discretion, solicit, evaluate and approve or disapprove, in full or in part, these requests for additional operating subsidy for costs beyond the control of the PHAs.

§ 890.109 Projected operating income level.

(a) *Policy.* PFS determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and projecting this amount for the Requested Budget Year by applying an upward trend factor (subject to updating) of 3 percent, and multiplying this amount by the average number of Project Units expected to be occupied during the Requested Budget Year. Nondwelling income is projected by the PHA subject to adjustment by HUD. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.* The projected average monthly dwelling rental income per unit for the PHA is computed as follows:

(1) *Average monthly dwelling rental charge per unit.* The dollar amount of the average monthly dwelling rental charge per unit shall be computed on the basis of the total dwelling rental charges (total of the adjusted rent roll amounts) for all Project Units, as shown on the Rent Roll Control and Analysis of Dwelling Rent Charges, which the PHA is required to maintain, for the first day of the month which is six months prior to the first day of the Requested Budget Year, except that if a change in the total of the Rent Rolls has occurred in a subsequent month which is prior to the beginning of the Requested Budget Year and prior to the submission of the Requested Budget Year Operating Budget, the PHA shall use the latest changed Rent Roll for the purpose of the computation. This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(2) *3 percent increase.* The average monthly dwelling rental charge per unit, computed under subparagraph (1) of this paragraph, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the PHA for the Requested Budget year.

(3) *Average percentage of occupancy.* The PHA shall estimate, based upon prior occupancy experience and the current physical condition of the dwelling units, the projected percentage of occupancy for all Project Units for the Requested Budget Year. Such estimate shall be not less than ninety-seven percent (97 percent) of the Project Units unless the PHA establishes to HUD's satisfaction that a lower projected occupancy percentage is justified based upon the number of units which reasonably cannot be expected to be occupied because (i) they are unmarketable due to lack of demand; (ii) they cannot be occupied because they will be temporarily removed from the Rent Roll for all or a part of

the year while being rehabilitated; (iii) they are not inhabitable due to the lack of funds for rehabilitation, or (iv) they have been removed from the Rent Roll pending approval for deprogramming. If the units are to be removed from the Rent Roll for only a part of the fiscal year, those months which the units will be occupied shall be included in the computation of the average percentage of occupancy.

(4) Projected average monthly dwelling rental income. The estimated average percentage of occupancy under subparagraph (3) of this paragraph shall be multiplied by the projected average monthly dwelling rental charge under subparagraph (2) of this paragraph to obtain the projected monthly dwelling rental income per unit.

(c) *Projected average monthly dwelling rental charge per unit for new Projects.* The projected average monthly dwelling rental charge for new Projects which were not available for occupancy during the budget year prior to the Requested Budget Year and which will reach the End of the Initial Operating Period (EIOP) within the first nine months of the Requested Budget Year, shall be calculated as follows:

(1) If the PHA has another Project or Projects under management which are comparable in terms of elderly and nonelderly tenant composition, the PHA shall use the projected average monthly dwelling rental charge for such Project or Projects.

(2) If the PHA has no other Projects which are comparable in terms of elderly and nonelderly tenant composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such Project or Projects, based on comparable Projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by tenants of Projects, each PHA shall submit a revision of its annual operating budget showing an estimate of any change in rental income which it anticipates as the result of the implementation of said provisions. HUD shall have complete discretion to adjust the projected average monthly dwelling rental charge per unit to reflect such change or in the absence of this submission, if HUD has knowledge of such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *PHA's estimate of income other than dwelling rental income.* The PHA shall estimate anticipated interest on general fund investments, surcharges for excess utilities, and all other anticipated nondwelling income. These estimates shall be based on the judgment of the PHA which will reflect past experience and a future projection for the Requested Budget Year, and shall be subject to HUD approval. The estimated amount, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount. Such amount shall be added to the projected average dwelling rental income per unit to obtain the Projected Operating Income Level.

(f) *Adjustments.* PHAs may request adjustments in accordance with § 890.110.

§ 890.110 Requests for adjustments.

Requests by PHAs for adjustments under PFS may only be submitted to HUD as provided in this section.

(a) *Request for increase of base year expense level.* During the first budget year under PFS, a PHA may request HUD to increase its Base Year Expense Level, not to exceed the top limit of the Range, as follows:

(1) *Criteria for granting an increase to bottom limit range.* A request for an increase of the Base Year Expense Level to an amount equal to or less than the bottom limit of the PHA's Range may be granted in whole or in part by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level of the PHA is unduly depressed, considering the amount of operating subsidy (or lack of any operating subsidy) made available to the PHA under the Interim Formula.

(2) *Criteria for granting increase above bottom limit of range (not to exceed top limit).* A request for an increase of the Base Year Expense Level to an amount above the bottom limit (but not to exceed the top limit) of the PHA's Range may be granted in whole or in part by HUD in its discretion only where the PHA establishes to HUD's satisfaction, the following:

(i) That the Base Year Expense Level of the PHA is unduly depressed because of the elimination or curtailment of essential services in light of the amount of operating subsidy (or lack of any operating subsidy) made available to the PHA under the Interim Formula; and

(ii) That the PHA without such increase would be unable to restore such curtailed or eliminated services, considering the amount of operating subsidy that would be paid under PFS in the light of such unduly depressed Base Year Expense Level, but also considering the method of separately determining Utilities Expense Level under § 890.107 and the method of determining Projected Operating Income under § 890.109. Anticipated costs of work items deferred from previous years or of a one-time nature may not be used to establish the above. Work items of a cyclical and continuing nature, not eligible for Modernization funds, shall be considered on an annualized basis.

(3) *Procedure.* A request under this paragraph (a) of this section may only be made once by a PHA. Such request shall be submitted to the HUD Field Office, which will review, modify and approve or disapprove the request. A request under this subsection must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Requests for adjustments of base year expense level new PHAs, or new projects.* A new PHA or a Project of an existing PHA which did not have a sufficient number of units available for occupancy in the Base Year to incur a level of operations that is representative of an entire fiscal year of operation, is required to use its Formula Expense Level as its Base Year Expense Level in order to determine its Allowable Expense Level for the first budget year under PFS. Such PHA may request an increase in its Base Year Expense Level (not to exceed the top limit of its Range). A request under this subsection may be granted by the HUD Field Office, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed as provided above, without adjustments, will result in operating subsidy at a level insufficient to support a reasonable level of essential services. Such a request shall be submitted at the time of submission of the Operating Budget for the first budget year under PFS.

(c) *Adjustments of Utilities Expense Level.* A PHA receiving operating subsidy pursuant to the provision of § 890.104, excluding those PHAs that receive operating subsidy solely for IPA audit (§ 890.108(a)), must submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. A narrative explanation of the reasons for the differences shall be a part of the submission. This request and the required narrative shall be submitted to the HUD Field Office by a deadline established by HUD, which will be during the PHA fiscal year following the PHA fiscal year for which an operating subsidy was received by the PHA, exclusive of a subsidy solely for IPA audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the date due may, in the discretion of HUD, result in withholding of further operating subsidy payments until it is received. Adjustments under this subsection normally will be made in the PHA fiscal year following the year for which adjustment is applicable, except as provided in subparagraph (5) of this paragraph or unless a repayment plan is necessary as noted in paragraph (e) of this section, as follows:

(1) A decrease in Utilities Expense Level due to decreased utility rates to the extent funded by operating subsidy will be deducted by HUD against future operating subsidy payments.

(2) An increase in Utilities Expense Level due to increased utility rates will be fully funded by residual receipts, if available during that fiscal year, or by increased operating subsidy, subject to availability of funds.

(3) Twenty-five percent of any decrease in Utilities Expense Level due to decreased consumption will be retained by the PHA; seventy-five percent will be offset by HUD against subsequent payments of operating subsidy.

(4) An increase in Utilities Expense Level due to increased consumption will be fully funded by residual receipts after provision for reserves, if available; if not available and if the increase would result in a reduction of the operating reserve below the authorized maximum, seventy-five percent of the amount of the reduction below such maximum will be funded by increased operating subsidy payments, subject to the availability of funds, if such excess utility consumption was due to causes which were beyond the control of the PHA.

(5) In emergency cases, where a PHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the PHA Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) through (c)(4) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(6) Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* Requests for adjustments to projected average monthly dwelling rental income may be made as follows:

(1) *Criteria for granting request.* A PHA may request an adjustment to projected average monthly dwelling rental income under PFS if the PHA can establish to HUD's satisfaction that the projected amount computed pursuant to § 890.109 was not attained because of circumstances beyond the control of the PHA, such as a substantial increase in general unemployment in the locality, or because of a revision of the PHA's rent schedule which has been approved by HUD. The PHA must also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part or deny any requested adjustment to projected average monthly dwelling rental income.

(2) *Procedure.* A request for an adjustment under this subsection shall be submitted to the HUD Field Office by a deadline established by HUD, which will be within twelve months following the PHA's fiscal year being adjusted. In emergency cases, however, where a PHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, a request for adjustments may be submitted to HUD at an earlier time.

(e) *HUD-initiated adjustments.* Notwithstanding any other provisions of this Subpart, HUD may at any time make downward adjustments in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters any of the components, data and projections upon which the approved operating subsidy was based. Normally, this adjustment shall be made in total in the PHA fiscal year in which the needed adjustment is determined; however, if this adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule, which represents the minimum number of years needed for repayment.

§ 890.111 Operating reserves.

(a) *Utilization of operating reserves.* HUD will not approve an operating budget or budget revision which proposes to utilize operating reserve funds that would cause the reserve balance to fall below 40 percent of the maximum operating reserve for the requested budget year, unless the PHA fully documents that such lesser reserve level will be sufficient to meet the working capital needs of the PHA. If operating reserves are utilized in excess of the amount approved by HUD in the operating budget, HUD is not obligated to provide additional operating subsidy to restore such funds.

(b) *Augmentation of the operating reserve.* The PFS does not specifically provide operating subsidy to augment the PHA's operating reserve. However, the full amount of the PHA's operating subsidy eligibility may be provided to the PHA, and some part or all of this amount may be used to augment the operating reserve as long as the estimated year-end reserve balance, as shown in the approved operating budget for the year for which the funds are requested, does not exceed the Maximum Operating Reserve amount as shown in the same operating budget.

§ 890.112 Operating Budget submission and approval.

(a) *Required board resolution.* In addition to other budget documentation required by HUD, each Operating Budget or Operating Budget revision submitted to HUD pursuant to the provisions of PFS shall include a certified copy of a Resolution of the Board of Commissioners stating that the Board has reviewed and approved the Operating Budget or Operating Budget revision and has found:

(1) That the proposed expenditures are necessary in the efficient and economical operation of the housing for the purpose of serving low-income families.

(2) That the financial plan is reasonable in that:

(i) It indicates a source of funding adequate to cover all proposed expenditures.

(ii) It does not provide for use of Federal funding in excess of that payable under the provisions of these regulations.

(3) That all proposed rental charges and expenditures will be consistent with provisions of law and the Annual Contributions Contract.

(b) *HUD limited Operating Budget review.* Detailed HUD review of the Operating Budgets or Operating Budget revisions normally will be limited to the prescribed PFS forms. Under this procedure, although the Operating Budget normally will not be reviewed in depth, the operating reserve calculation in all cases will be examined and budget modifications will be made where the operating reserve provisions are not in accordance with HUD requirements. In addition, if the HUD Field Office finds that an Operating Budget is incomplete, includes illegal or ineligible expenditures, mathematical errors or errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office shall modify or disapprove the Operating Budget. The HUD Field Office may at any time require the submission by the PHA of further information regarding an Operating Budget or Operating Budget revision.

(c) *Withdrawal by HUD of limited Operating Budget review.* HUD reserves the right at any time to deviate from the limited Operating Budget review provided in paragraph (b) of this section if HUD finds that the PHA is operating its program in a manner which threatens the future serviceability, efficiency, economy, or stability of the housing which it operates. If such action is deemed necessary, the HUD Field Office will normally notify the PHA prior to its submission of the Operating Budget that HUD will subject the Operating Budget to a detailed review. The PHA will be notified when its operation no longer threatens the future serviceability, efficiency, economy or stability of the housing and that the limited review as provided in paragraph (b) of this section is being reinstated.

§ 890.113 Payments procedure for Operating Subsidy under PFS.

(a) *General.* Payments of operating subsidy to each PHA under PFS shall be made in advance pro rata (in accordance with approved payments schedules) at the beginning of each year, or each month or each quarter, as determined by HUD, subject to the availability of funds.

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of a PHA's budget year under these PFS regulations, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the PHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under PFS for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to PHAs.

§ 890.114 Payments of Operating Subsidy Conditioned Upon Certification of Rent-Income Ratio.

Section 9(b) of the USH Act provides that as a condition of eligibility for a PHA to receive operating subsidy, the

"aggregate rentals required to be paid in any year by families residing in the dwelling units administered by a Public Housing Agency * * * shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families." These provisions were implemented by the publication of an Interim Rule, Part 860 Subpart D—Minimum and Maximum Rent-Income Ratios and Minimum Rent Requirements, published in the FEDERAL REGISTER on September 26, 1975, 40 FR 44323–44326. Each submission of an Operating Budget or revision thereof, shall be accompanied by a certification by the PHA that it is in compliance with the requirements of Section 9(b) of the U.S. Housing Act and of § 860.407 of 24 CFR Part 860, including any amendments thereto.

§ 890.115 Payments of Operating Subsidy Conditioned upon Reexamination of Incomes of Families in Occupancy.

(a) *Policy.* Section 207, Continued Occupancy, Subsection (A) of Part II of the Annual Contributions Contract, which sets forth HUD policy regarding the provision of the United States Housing Act of 1937, as amended, for the reexamination of families, requires that "the PHA shall at least once a year reexamine the incomes of families living in the Project except that families whose heads (or their spouses) or whose sole members are 62 years of age or over may be reexamined only once every two years: Provided, that the length of time between the admission of a family subject to yearly reexamination and the first reexamination of such family may be extended to not more than 18 months if necessary to fit a reexamination schedule established by the PHA." PHAs must be in compliance with the requirement of Section 207(A) to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirement.* Each submission of an Operating Budget or revision thereof, shall be accompanied by a certification by the PHA that it is in compliance with the requirement of Section 207(A), Part II, of the Annual Contributions Contract, and that rents have been, or will be adjusted in accordance with the PHA's rent schedule. PHAs for which Operating Budgets for fiscal years beginning on or after October 1, 1976, have already been submitted, shall submit the required certification within 60 days after the effective date of Part 890 Subpart A.

(c) *PHAs not in compliance with requirement.* PHAs not in compliance with the above mentioned requirement of Section 207(A) as of the effective date of Part 890 Subpart A, must submit a procedure and a time schedule to the HUD Field Office within 60 days after the effective date which indicates that all reexaminations that are delinquent pursuant to the time schedule established in Section 207(A) will have been conducted by June 30, 1977, and that all appropriate rent adjustments will be made.

(d) *PHAs not in compliance by June 30, 1977 or thereafter.* Any PHA not in compliance with Section 207(A) as of June 30, 1977, or at the time of subsequent Operating Budget submissions or submissions of revisions thereof, shall furnish to the HUD Field Office, a copy of the procedure implementing the requirement of Section 207(A) and a statement of the number of elderly and non-elderly families that have undergone reexamination during the twelve months preceding June 30, 1977, or the twelve months preceding the date of the Operating Budget submissions, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the requirement of Section 207(A), he shall withhold payments to which the PHA may be otherwise entitled under Part 890 Subpart A, equal to his estimate of the loss of rental income to the PHA resulting from its failure to comply with the requirement of Section 207(A).

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: This revision to Part 890, Subpart A, is effective January 20, 1977.

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

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federal register

TUESDAY, DECEMBER 21, 1976

PART VII:

INTERSTATE COMMERCE COMMISSION

■

STANDARD FOR DETERMINING RAIL SERVICES CONTINUATION SUBSIDIES

Report and Order

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 293; Sub. No. 2]

PART 1125—STANDARDS FOR DETERMINING RAIL SERVICES CONTINUATION SUBSIDIES

Report and Order

Section 205(d)(6) of the Regional Rail Reorganization Act of 1973 (the RRR Act), 45 U.S.C. 715(d)(6), as amended by Section 309 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the Rail Act), Pub. L. 94-210, directs the Rail Services Planning Office (the Office) of the Interstate Commerce Commission (the Commission) to:

> Determine and publish, and from time to time revise and reissue, standards for determining (A) the "revenue attributable to the rail properties", (B) the "avoidable costs of providing service", (C) a "reasonable return on the value", and (D) a "reasonable management fee", as those phrases are used in section 304 of this Act (as amended by Section 804 of the Rail Act), after a proceeding in accordance with the provisions of section 553 of title 5, United States Code.

The Office first issued standards on July 1, 1974, for computing subsidies for the continuation of rail freight service in the Northeast-Midwest Region (39 FR 2429). After field testing, revised standards were published January 8, 1975 (40 FR 1624). They have since been amended on March 28, 1975 (40 FR 14186); January 22, 1976 (41 FR 3402); and March 26, 1976 (41 FR 12836).

DISCUSSION

On August 19, 1976, the Office reopened this proceeding and invited comment on a number of proposed modifications in the standards, some suggested by interested parties and some put forth by the Office itself (41 FR 35731). The Office received 20 statements in response to its invitation. The parties were afforded the opportunity to file reply comments, and, to facilitate that process, the Office served all parties filing initial statements by the pleading deadline with a full set of the statements received. Six reply comments were filed. (The parties are listed at the end of this report.) After careful consideration of the views of the parties, the regional standards have been revised as set forth in the Order which accompanies this report.

Reasonable variations from the standards. In the Notice, which reopened this rulemaking proceeding, the Office indicated that the parties are or should be free to negotiate reasonable compensation arrangements which vary from the standards in four areas: revenues from bridge traffic, termination of service costs, management fee, and alternative compensation for use of property. U.S. DOT asserts that although ordinarily it would "strongly support" the negotiation of such items, it nonetheless believes that the "peculiar circumstances" pertaining to the Federal financial assistance program require clear, definite and predictable standards. DOT argues that providing for negotiation at the present time would place subsidizers in an "impossible bargaining position." It believes that if subsidizers are forced to make higher payments, "the result will be a substantial and unnecessary increase in Federal financial assistance."

The Commonwealth of Massachusetts sharply disagrees with DOT's position. It asserts that rigidly inflexible standards have two important faults: they "only apply to a hypothetical situation envisioned in the standards", while the subsidizer must deal with "real world" situations, and they deprive the parties of the opportunity to experiment with different approaches to the overall problems of preserving light-density freight service. Massachusetts strongly feels "that the existing philosophy in the standards [should] be maintained and extended to include areas where flexibility is necessary." It believes that the subsidizer's bargaining position will be preserved since the standards will apply when the parties cannot mutually agree on different compensation terms. It, too, subscribes to providing subsidies at the "lowest possible cost", but not at the expense of other statutory goals, e.g., preserving existing patterns of service, promoting competition, conserving energy and minimizing job losses.

The Office agrees with DOT that the standards should be clear, definite and predictable. It disagrees that only slavish adherence to these principles will achieve Congressional goals. As a practical matter, the subsidizers and carriers have concluded compensation arrangements for the first subsidy year which closely conform to the standards. We anticipate that this will be the case for the second subsidy year. However, we believe it important to afford the parties the opportunity to apply their initial experience with the subsidy program and to negotiate mutually acceptable compensation arrangements which differ from the standards. Such flexibility is not likely to result in substantially higher Federal assistance. The subsidizers will share the cost of the subsidies in the second year and may be expected to bargain in good faith with the operators.

Consequently, the standards have been amended to affirm that the parties are free to negotiate compensation terms which vary from the standards, subject to their review by the Office. The variances must be the product of arm's-length negotiations and must not be designed to disadvantage third parties, e.g., FRA. The revised procedures require the parties to serve any renewal or modification of their subsidy agreements on the Office. The Office would not expect to disapprove terms at variance from the standards which appear to be reasonable in light of the pertinent facts and circumstances.

Passenger train revenues and costs. The Office received no adverse comment on its proposal to amend the standards to provide that revenues, costs, and return on the value of properties covered by the commuter rail service continuation subsidy standards (41 FR 32545) will be excluded from the regional freight standards. The standards have been amended accordingly.

Revenues from bridge and interchange traffic. With regard to bridge traffic, the Office stressed in its Notice that the parties are not bound by the mileage apportionment in the present standards but are free to negotiate a mutually acceptable usage charge. With regard to interchange traffic, the Office stated its intention to consider such traffic as if it originated or terminated on the branch. The comments support RSPO's positions. However, the State of Michigan Department of Highways and Transportation suggests that there should be an alternative in the standards to allow the use of divisions in determining attributable interchange revenues. The Office believes it would not be unreasonable for parties to mutually agree to compute the revenue attributable to such traffic from the divisions in effect on or subsequent to March 31, 1976. The Massachusetts Executive Office of Transportation and Construction suggests that the subsidizer should have authority to approve or establish guidelines for interchange traffic. The negotiation of such arrangements may be undertaken by the parties to the operating agreement but will not be provided for specifically in the standards.

Off-branch costs—Class II railroads. As pointed out in the Notice, the annual report of Class II railroads (Form R-2) does not contain expense categories and service units in sufficient detail to compute off-branch costs in the manner presently prescribed in the standards. The Office proposed new procedures using ton-miles of revenue freight as the basis for assigning Class II off-branch costs. Under this method, the total of operating expenses, rents and taxes, excluding federal income taxes, is multiplied by a 3-year composite variability factor (currently .78) for all Class I railroads, and this amount is divided by the system total revenue ton-miles. This unit cost is applied to the total revenue ton-miles accumulated by branch line traffic moving over other portions of the Class II carrier's system.

Review of the comments on this proposed change in the standards has not persuaded the Office to revise its proposal. If the Class II road is relatively short, terminal costs will represent a high proportion of the total costs for all movements. If it has substantial line-haul mileage, terminal costs will have a lesser influence than mileage on the total. In either case, the use of a single factor, such as revenue ton-miles, best reflects the cost of performing transportation on that railroad. The parties of course are free to negotiate an alternate approach, including an agreement to conduct special studies of the carrier's actual costs for particular movements. In the event of disagreement, the Office would entertain a request from either the subsidizer or the railroad that it order such special studies to be conducted.

New Jersey DOT submitted a formula for determining Class II railroad off-branch costs employing a separate Class I railroad terminal factor (obtained from

the most recent ICC cost studies) and a carrier-related line-haul factor. The difficulty with this approach is that: the terminal cost data would not be current; the costs would be regional, rather than individual carrier costs; the terminal costs represent Class I railroads; and the line-haul costs would not be accurate because they are residual in nature. The Office believes that its proposed method would yield more current and more accurate results and would be less costly to apply.

Pennsylvania DOT asserts that RSPO's Class II approach is unlawful because it calls for allocated instead of avoidable costs. Pennsylvania is incorrect; only variable Class II costs are used in the RSPO approach and they are applied on the same basic theory as for Class I railroads under the present standards. U.S. DOT favors a method based on the operating ratio times the carrier's system-wide variable cost percentage times attributable revenues. If all rates were cost based and there were a constant profit margin, this method might have limited application. The major flaw with this method is that it assumes a static relationship between revenue and costs for all commodities and all lengths of haul.

Revenues from shipments with transit privileges. The Office intends that all revenues generated by traffic originated or terminated on a branch, including transit revenues, be attributed to that branch; we see no reason for excluding any revenues from proportional-rated traffic. The responses of Agway, Inc., Baker/Beech-Nut Corporation, and the Consolidated Rail Corporation (Conrail) indicate that this intention is not being fully implemented in the reporting of revenues and that there are some practical difficulties arising out of the increasing dependence of rail managements on computerized recordkeeping, e.g., revenues on light-density line shipments afforded certain types of transit privileges could be subject to adjustment up to two years after original submission of the registration on the car. Conrail asserts that the administrative cost of precise attribution of transit revenue to branch lines would far outweigh the slight refinement in revenue reporting which would result. Agway, however, notes that Conrail's tariffs normally include separate charges for transit privileges which it believes are at a level sufficiently high to more than cover the extra costs associated with the transit service. New York DOT believes that waybills can be used to credit transit revenues to branch lines.

Although the Office recognizes the problems raised by Conrail, and has no desire to impose undue accounting or recordkeeping burdens, it cannot concur that the exclusion of any revenues properly attributable to a branch is acceptable. Therefore, the standard has been revised to specifically require the inclusion of transit revenues.

Where a branch is used for the movement of transit traffic, the movements are likely to be repetitive. For the purposes of subsidy agreements, the railroad and the subsidizer may agree to a revenue adjustment based on sampling studies or other appropriate procedures in lieu of the recording of actual detailed full transit revenues.

New Jersey DOT has suggested that the operating carrier should be allowed to charge $6.50 as an additional administrative expense for each transit movement involving a light-density line. While no data has been submitted to support this approach, the parties may negotiate reasonable unit charges if they so desire.

After the period for filing reply comments had closed, Conrail requested a further opportunity to describe the difficulties which it would expect to encounter in accounting for the actual revenues and costs arising from transit shipments. In response to Conrail's request, the Office extended invitations to all participants in this proceeding to attend a meeting on Monday, December 13, 1976; representatives of Conrail, Chessie, Hillsdale County Railway, FRA, NITL, Public Counsel and the States of Illinois, Maryland, Michigan, Pennsylvania, and New York attended the meeting. The participants generally subscribed to the proposition that costs and revenues from transit shipments should be included in subsidy calculations. However, there was no consensus as to how such costs and revenues should be determined. Hence, the participants intend to conduct two special studies, one focusing on transit shipments originating on a subsidized line and the other focusing on transit shipments terminating on a subsidized line. Any agreements worked out by the operating railroads and the subsidizers as a result of, or independent from, these studies, must be submitted to the Office for its review. The Office would not expect to disapprove special methods for attributing transit revenues and costs which are the product of arm's-length negotiations and are shown to be reasonable in light of the pertinent facts and circumstances.

Income from property over which subsidized service is performed. The Notice requested the views of the parties with respect to the treatment of non-transport income generated by rail properties over which subsidized service is operated. It also proposed to amend the standards to provide for alternative compensation for the use of the properties, not necessarily based directly on their net liquidation values. Thirteen of the responses address one or both of these inter-related questions, which are discussed here together.

Section 1125.4(d) as amended herein provides for inclusion in revenues attributable to the branch of amounts accruing under Accounts 110, 113, 131, 132, 133, 135, 137, 138, 139, 141, 142, 143, 151, and 152. New Jersey DOT points out that some income would accrue to the owners of the properties under Accounts 510, 511, 519 and 543 from power, sewer, water, or other crossings or occupations of the right-of-way; from parking lot rentals; and from other non-transport uses. It recommends that the standards be amended to: (1) Include income from the properties leased under the standards; (2) capitalize the income as an offset against the value of the properties; or (3) permit use of a "tunnel," or limited easement, lease. Other subsidizing entities express similar, although not identical, views on this point. Conrail disagrees with New Jersey DOT's proposal, but requests that if the Office intends to rule favorably upon it, the language be clarified to insure that any credits apply only as an offset to lease and real estate tax payments made to the owner of the line, and not as an offset to the operating subsidy. The Penn Central Trustees note that it is they, and not the subsidizers, who have created the values of these non-rail rentals; they could conceive of New Jersey's DOT's position being justified only if the underlying values from which the capitalized rentals were to be deducted were increased to reflect the enhanced nature of the rail properties resulting from existing non-rail income.

Section 1125.6(b) of the standards provides that the value of the properties "shall be their net liquidation value * * * determined by computing their current market value *for other than rail transportation purposes* * * *." Such value would include the capitalized value which any prospective purchaser would place upon the income being received from non-transport leases or easements. If the return element of the subsidy is based on the value so computed, it should be offset by the income so capitalized. The positions of the Penn Central Trustees and of New Jersey DOT could thus be harmonized by this treatment of the non-transport income; by an approach which excludes the capitalized value of the nontransport income from the value of the properties; or by the New Jersey DOT "tunnel" lease approach. The first method would be the simplest to apply; however, the Office believes the present standard will accommodate any one of the three approaches.

Conrail's view that non-rail income should not be offset against payments to the operator is correct. The need for offsetting such income against the compensation for use of the properties would also be obviated were the parties to resort to the alternative compensation discussed below.

The National Industrial Traffic League (NITL) proposes that § 1125.6(b) be amended to limit the value of the properties to the lesser of either net liquidation value or the carrier's net book investment. This proposal has not been adopted. Whether the users of the services operated over these properties in the past have in fact collectively paid sufficient amounts in rates and fares to retire the investment and pay an adequate return is beyond the scope of this proceeding. In any event, it would be unreasonable to simultaneously impose limits of net liquidation value for non-rail purposes and of net book value computed under the Uniform System of Accounts for rail purposes.

New Jersey DOT, the Lehigh Valley Trustee, and a number of other parties favor making provision for alternative compensation for use of the properties

based on arm's-length negotiations. New York DOT believes it imperative that the new rule exclude a determination of the value of the property from the base for computing compensation to the owners. DOT recommends that the Office not amend the standards. It believes that the parties can and will reach agreement based on the present standard; that to use any principle other than net liquidation value would presumably result in a higher value and occasion an unwarranted windfall to the estates; and that this would contravene the Congressional goal to provide rail service continuation assistance at the least possible cost to the general taxpayers (section 101(b)(6) of the RRR Act).

This problem has been addressed by section 205(a) of the Rail Transportation Improvement Act, Pub. L. 94-555, which adds a new section 304(d)(4) to the Regional Rail Reorganization Act of 1973 reading as follows:

> (4) No determination of reasonable payment for the use of rail properties of a railroad in reorganization in the region, and no determination of value of rail properties of such a railroad (including supporting or related documents or reports of any kind) which is made in connection with any lease agreement, contract of sale, or other agreement or understanding which is entered into after the date of enactment of the Rail Amendments of 1976—
>
> (A) pursuant to this section; or
>
> (B) pursuant to section 402 of this Act or section 17 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1613(b)), shall be admitted as evidence, or used for any other purpose, in any civil action, or any other proceeding for damages or compensation, arising under this Act.

This amendment eliminates a principal impediment to agreements with regard to valuation, and possibly such agreements can now be reached, as DOT believes. Nonetheless, the responses of the parties other than DOT indicate a consensus favoring some flexibility to agree upon reasonable compensation for the use of the properties without the necessity for valuation of individual properties or resort to the arbitration procedures of §§ 1125.6(c)—(f). The Office believes such flexibility is desirable and that the interests of all parties, including those of the general taxpayers, will be best served by prompt, negotiated resolution of the impasse which has arisen, without the expense and delay of arbitration, litigation, or other compulsion.

The Office also is mindful that section 304(d)(3) of the Act intends the trustees to receive a reasonable return on the value of their properties, as determined in accordance with the standards. Therefore, determination of the compensation for use cannot, as New York DOT's response might suggest, completely exclude consideration of the values or of reasonableness. However, this does not mean that each individual line must be separately valued, as long as the over-all compensation received by the owners for use of their properties is not unreasonably related to the total values. The terms of compensation for individual properties may be incorporated in trackage rights agreements, leases, or any other appropriate contracts reached by the parties in good faith, arm's-length negotiations. The value of each line need not be specified in such agreements, although it is expected that the negotiating parties will take it into consideration.

The Office therefore interprets § 1125.7 as not only providing for offset of non-transport income against the return to be paid the owners if the capitalized value of such income has been included in the value of the properties, but also as permitting alternative compensation based on arm's-length negotiations. To protect the interests of the general taxpayers, agreements embodying such alternative compensation must be submitted for the Office's approval. The Office does not expect to disapprove agreements produced by arm's-length negotiations unless in its view the over-all compensation to the owners is unreasonable.

Superintendence cost. In its notice, the Office asked the parties to comment on whether superintendence costs should be included in the standards, and, if so, what would be the fairest way of assigning such costs to individual branch lines. The comments were overwhelmingly in agreement that some superintendence costs should be allowed; however, there was no general agreement as to the fairest method of assigning such costs. Some parties contended that only actual costs should be assigned. Conrail asserts that it is almost impossible to keep track of the time of high level supervisors and requests that superintendence costs be allowed as a labor additive. The Virginia Department of Highways and Transportation suggests that if a superintendent spends the majority of his time on a subsidized line, the cost could be prorated based on the crew time spent on the subsidized line as it relates to crew time spent on other lines. New Jersey DOT would allow superintendence costs only when a supervisor is assigned directly to a subsidized line. Public Counsel stresses that if superintendence costs are to be assigned directly to a branch, the operating carrier must be able to document such costs soundly.

The Office has concluded that the fairest approach is to provide that actual, direct superintendence costs be included in the standards, based on the number of hours actually devoted to the branch line. These costs will be subject to audit. The parties are free, of course, to negotiate any other reasonable basis for the inclusion of superintendence costs acceptable to them.

Engineering costs. The Office has indicated its tentative opinion that engineering costs should be negotiated separately from the operating agreement and should be included as part of the rehabilitation costs. The parties are generally in agreement, and Conrail notes that it has already implemented this approach. Since the desired result can be achieved under the present standards, no change has been made.

Maintenance of way equipment repair costs. The Office proposed in its Notice that such repair costs, if incurred solely on the branch, should be included as direct costs; however, it expressed a fear that such an approach might lead to some degree of cross-subsidization by the subsidizer of the upkeep of the carrier's maintenance of way equipment. The Office requested suggestions from the parties as to how to avoid this result. The comments mostly support RSPO's approach but echo its apprehensions. Conrail contends that keeping track of actual expenses would place too great a recordkeeping burden on it and requests that the Office apportion the equipment repair accounts on the basis of some relevant statistic, preferably related to labor and materials. New York DOT contends that Conrail's approach would inflate the costs for branch lines; that average repair costs are readily available; and that average repair costs should be assigned on the number of days the machine is actually used on the branch. New Jersey DOT supports Conrail's approach provided that Conrail's handling of the costs of rehabilitation and capital projects does not result in overstatement of branch line costs. Massachusetts agrees with the New York DOT approach but stresses that for Account 269 the cost should be based on the lowest cost alternative rather than average repair cost.

The Office has concluded that the fairest approach is to assign roadway and machine and small tool maintenance costs to the branch in proportion to roadway maintenance costs (Accounts 202-220). This approach should fairly apportion costs while minimizing recordkeeping and clerical time.

Running overhead from yard to branch, deadheading, taxi and hotel costs. In its Notice, the Office indicated its belief that these costs should be included in the standards but at the same time expressed apprehension that their inclusion might reward or encourage inefficiency on the part of the operator. The parties were encouraged to propose a standard which would promote efficient operations. The Office did not find any of the suggested approaches to be totally satisfactory. It has concluded that the fairest way to handle these costs is to allow them to be included on an actual basis. Although this approach will not provide the desired incentive to efficiency, the carrier is already obligated to provide efficient service and the subsidizer can enforce this obligation through intensive auditing. With regard to costs included for running overhead to provide service to a branch, it should be noted that the off-branch costs per car-mile must be adjusted to exclude the overhead mileage. Deadheading, taxi and hotel costs, which ordinarily would be included in wage accounts, are to be maintained separately to facilitate auditing.

Specialized equipment costs. RSPO did not receive any unfavorable comment on its proposal to amend the stand-

ards to provide that the actual repair and other costs of specialized equipment assigned to the branch should be allowed.

Termination of service costs. Since the publication of the August 19, 1976 Notice, the Office has formally requested the views of the Railroad Retirement Board as to whether employees assigned by Conrail to work on branch lines operated under subsidy would be protected by the provisions of Title V of the RRR Act should the subsidy not be renewed. In its response of October 5, 1976, the Board concluded that it lacks authority to make any decision with respect to an employee's rights under Title V, citing an opinion of the Comptroller General, dated August 2, 1976 (No. B-114817). That opinion states that "* * * questions which arise as to the types of payments to be made under section 509 were not intended by Congress to be resolved by the Railroad Retirement Board." The Comptroller General cites the arbitration procedures set up by section 507 of the RRR Act; notes that the Railroad Retirement Board is not given a role in the arbitration process; and concludes that "* * * the entity charged with actually disbursing the appropriated funds * * * (e.g., the Consolidated Rail Corporation) must be considered the entity with the responsibility to assure that those funds are lawfully and properly applied * * *". In view of this opinion, it seems clear that Conrail or the designated operator is afforded sole discretion to administer the termination rights of employees under Title V. The Retirement Board's response and the Comptroller General's opinion are included in the record in this proceeding and copies will be made available to interested parties upon request.

With regard to other termination costs, such as the cost of removing equipment after stopping service on a subsidized line, the Office has chosen to follow its initial course. The standards have been amended to provide that termination costs, to the extent that they can be shown to be validly incurred as a direct and sole result of termination of the subsidy, will be considered avoidable costs of providing service. Alternatively, the parties can include in the operating agreement a mutually acceptable amount to cover the reasonable costs of termination, although Conrail and others indicate that it will be difficult to determine termination costs in advance.

Administrative fee. In its Notice, the Office stated that it did not believe that there was a need to revise the administrative fee of 0.5 percent of the total annual revenues attributable to a branch line but indicated that it would reconsider if operating experience should demonstrate that the actual cost of administering subsidized service substantially exceeds the fee as determined by the 0.5 percent standard. All of the State comments support this position. The Octoraro Railway, noting that it will receive an estimated $500 administrative fee under the 0.5 percent standard, states that it should have the option to have its actual costs allowed. Conrail estimates that its administrative costs for the first year subsidy program will be $710,000. (The Office presently estimates that under the 0.5 percent standard, Conrail will receive an administrative fee the first year of $230,000.) In its reply brief, Conrail stated its willingness to undergo an audit. An auditor from the Commission and a cost analyst from RSPO audited Conrail's estimated administrative expenses and concluded that the total estimated administrative cost for the first year would be a minimum of $595,000. (The audit was observed by a representative of several state agencies.) In view of these findings, the Office believes that in fairness the operating carrier's administrative fee should be increased from 0.5 percent to one percent of annual revenues.

Management fee. The Notice stressed that the 4.5 percent management fee contained in the standards is not a ceiling, and, for the most part, the comments do not dispute this statement; however, the Maryland and New Jersey DOT's suggest that the Office stress the 4.5 percent fee is also not intended to be a floor. We disagree; in our view, Conrail and other "designated railroads" (Section 304(d)(1) of the RRR Act) are entitled to receive a minimum of 4.5 percent return for providing subsidized service. Moreover, "responsible persons", including short line operators designated by a subsidizer, are in a preferred position, since unlike Conrail or other designated railroads, they are under no legal compulsion to continue service on the subsidized light-density lines. For this reason, we would not expect to disapprove a short line operator's fee, which exceeded 4.5 percent, even though it was not tied to incentive provisions.

Traffic and general expenses. In its Notice, the Office proposed a test to be used in determining whether a railroad would be eligible to include traffic and general expenses. In response to the comments, the Office has modified the wording of the test to read as follows:

> The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis and will be assignable only if the size of the railroad's operation (measured in total mileage, gross revenues, gross ton-miles or car-miles) is increased by more than 25 percent as a result of operating the subsidized service, or the individual line being operated under a subsidy agreement generates $10 million or more in gross revenues per annum.

In response to the comments of both the Octoraro and Hillsdale Railways, the Office wishes to make clear that a new carrier, formed to operate a subsidized line, will qualify under this test since the size of its operation, which did not exist at the start of the subsidy program, will be increased by more than the prerequisite 25 percent. Expenses includable under this section are to be direct expenses, not apportioned. They should be covered in the operating agreement between the parties and subject to audit by the subsidizer. This approach should alleviate the strong objection of the Office of Public Counsel, which contends that the inclusion of traffic and general expenses as an avoidable cost will lead to a loosening of the standards whereby virtually any cost could be viewed as avoidable.

It should also be emphasized that where the railroad qualifies for reimbursement for traffic expenses the Office would expect it to make a conscientious effort to maximize branch line traffic in consideration for reimbursement of its net avoidable costs, including traffic expenses, plus payment of a management fee. We believe the subsidizer may properly insist that the railroad solicit branch line traffic, e.g., include the branch line on maps which are published for traffic solicitation purposes. The failure to perform this service would in our view constitute grounds for refusing Federal reimbursement of traffic expenses.

Determination of revenue attributable. The Office stated in its Notice that it would consider suggestions from the parties on alternative methods of defining "revenue attributable" which would permit elimination of off-branch costs. Pennsylvania DOT contends that the Office is limited to the present approach or to the application of Rail Form A standard costing to branch line revenue, specifying $80 per car plus $1 per mile (or whatever Rail Form A studies determine). New York DOT argues that the revenue properly attributable to the rail properties is the actual revenue that would be lost if the line were abandoned. It advocates a precise traffic retention factor for each branch line. The Chessie System is unalterably opposed to any attempt to develop procedures for allocating revenues between on- and off-branch segments, and thereby excluding the use of off-branch costs as an element of total avoidable cost. The more valid approach, in the opinion of the Chessie, is to concentrate attention on refining measurements of avoidable off-branch costs. Conrail states that it is open to further discussion of New York's suggestion for use of a "revenue retention factor" but is not presently able to devote the necessary time to research alternative methods of defining revenues. DOT believes the present standard represents probably the least arbitrary approach and suggests that the adoption of a cost-center based uniform system of accounts could make it more accurate. Public Counsel asserts that in the absence of a proper system of accounts, the existing standards, "though essentially an application of average variable costs by commodity, represents the 'best' method to determine off-branch costs."

In view of these comments, the Office is retaining its present method for determining revenues attributable. As noted by the Commission in its report concerning the national standards for abandonment of lines and discontinuance of service (41 FR 48520) several studies and experiments are underway, the results of which, when available, may be expected to shed some new light on the problem. The principal advantage of developing an alternative to the present method of attributing revenues for originated and terminated traffic would be

to eliminate off-branch costing. The Office will be receptive to future proposals which would achieve this result. Generally, such proposals should meet the same tests of justness and reasonableness as would be required of divisions of joint rates under section 15(6)(a) of the Interstate Commerce Act.

Alternative compensation for use of property over which subsidized service is performed. This subject is discussed above under the heading "Income from property over which the subsidized service is performed."

Technical amendment. The Office proposed to revise § 1125.1(d) to read in pertinent part:

> The final payment will be adjusted based on data related to the subsidy period. Where an adjustment results in an increase in the estimated subsidy payment, the amount of such increase in excess of 15 percent of the estimated payment shall be treated as a carryover avoidable cost in the subsequent subsidy year unless the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent *based on the data contained in one of the Financial Status Reports issued during the first 10 months of the subsidy year as* required by § 1125.9(f) or the increase results from an expense preapproved by the subsidizer.

The only objection to this amendment came from the Maryland DOT which interpreted its effect as being to release an operating carrier from its obligation to submit timely financial reports, thus placing an unreasonable burden on the subsidizer. The amendment has been adopted as proposed. In its reply brief, Conrail stated that its goal is to issue monthly status reports with the intention of closing the preparation time to a period not to exceed 110 days from the end of the operating month.

The Office has made other editorial revisions and added miscellaneous accounts to conform, as appropriate, the regional standards with the recently adopted national abandonment and subsidy standards (41 FR 48520).

Additional points raised by the comments. Conrail suggests that the Office amend § 1125.5 *Avoidable cost of providing service* specifically to include costs of arbitraries, vacation, holiday and sick pay. The Office does not believe that such an amendment is necessary since these costs are included in the section. However, the section has been amended to provide that these items must be identified separately for audit purposes when they are included in the carrier's labor costs.

Section 1125.5(g) of the standards presently uses miles of track as the sole basis for the apportionment to a Branch of property taxes levied on a state-wide basis. Conrail suggests that when a state-wide valuation formula is used in the evaluation of rail properties for tax purposes, the tax cost for an individual branch should be based on the distribution of the assessment by the State to that branch and the application of the appropriate tax rate. In addition, Conrail suggests a separate procedure for determining the tax applicable to rolling stock attributable to each branch. The New Jersey DOT concurs with both of these proposals. The Office has concluded that their implementation will result in a more accurate determination of property taxes attributable to branch lines and has amended the standards accordingly.

The Office of Public Counsel stresses the need for a system of accounts which will allow an accurate determination necessity of calculating off-branch costs. Public Counsel argues that as long as such a system of accounts is unavailable, any assignment of costs and revenues must be arbitrary and the Office will continue to receive modification requests from parties who perceive an individual benefit to be gained by the requested modification. Public Counsel recommends that the Office conduct studies to identify the appropriate generalized cost and rail operations based on the functions which a railroad performs; the level of specificity necessary for an accurate determination of the costs associated with a particular rail service; the segments of a railroad for which data should be collected; and the cost and feasibility of implementing such a system. Furthermore, Public Counsel recommends that the Office seek legislation giving it clear authority to require that the necessary data be developed and costing systems be implemented.

The Office agrees with Public Counsel that a more accurate system of accounts is desirable. Toward that end, the Office is working with the Commission on the formulation of a new uniform system of accounts. The Commission has been assigned the responsibility under the Rail Act to promulgate such a system by June 30, 1977. A proposed system of accounts, based on cost-centers, was issued August 2, 1976, 41 FR 33016, and the Commission is currently reviewing public comment on its proposals. It is not certain that the system of accounts which is finally adopted will prove a panacea, but it is anticipated that the accuracy of cost and revenue determinations under the standards will be improved, and, therefore, the standards will be amended to conform to the new system when it is adopted.

Retroactivity. The Office received widely divergent comments on the question of which, if any, of the proposed amendments should be made retroactive to the date branch lines were first operated under the freight service subsidy program. The Michigan Department of Highways and Transportation argues that all of the amendments should be retroactive on the grounds that otherwise there will not be a proper base on which to compare various years of operations; furthermore, unless some of the amendments are made retroactive, some operators will be not be able to recover their costs in the first year of operations and may decline to continue operations for the second subsidy year. On the other hand, the Maryland DOT is unwilling to allow any retroactivity and argues that the standards in effect at the time the operating contract was executed should remain in force for the life of the contract. Maryland DOT points out that it may be impossible for States to increase amounts budgeted for the subsidy program during the middle of the contractual and fiscal year. Pennsylvania DOT also points out that it is not legal for many governmental agencies to pay retroactively determined costs. Most governments are required to set a ceiling on contracts before they can be approved. By law, retroactivity would thus be limited in its effectiveness to the ceiling set by State on the individual contracts. Conrail counters these arguments by noting that most of the cost items being considered in this proceeding were pointed out to all parties during the negotiation period. However, Conrail also states that it may not be feasible to make some of the amendments retroactive since the necessary data for the period involved may not be available. The Hillsdale Railway, a short line carrier, states that the proposed amendments should be made retroactive as long as no adverse economic impact will result for short line carriers.

Only two of the comments, those of the New Jersey and the Virginia transportation departments, specify those proposed amendments which the departments believe should be made retroactive. New Jersey DOT recommends that only the following amendments be retroactive: revenues from bridge and overhead traffic; off-branch costs—Class II railroads; income from property over which subsidized service is performed; maintenance of way equipment repair costs; and taxi, meals and hotel costs (Account 402 prorated on miles, not hours). It would make the amendments concerning supervision costs, management fee and traffic and general expenses effective at the start of the second subsidy year. The Virginia Department of Highways and Transportation recommends that the following amendments be made retroactive: superintendence costs; maintenance of way equipment repair costs; administrative fee; management fee; and traffic and general expenses.

As a general principle, the Office believes that it would be inappropriate to disrupt the existing contractual relationships between the railroads and the subsidizers by applying the standards retroactively in the first subsidy year. Therefore, the following changes in the standards will apply prospectively to contracts executed subsequent to the effective date of this order, unless the parties mutually agree (or have mutually agreed) to their retroactive application: revenues from interchange traffic; off-branch costs—Class II railroads; superintendence costs; maintenance of way equipment repair costs; running overhead from yard to branch, deadheading, taxi and hotel costs; termination of service costs; administrative fee; traffic and general expenses; and property taxes.

The Office has clarified the intent or application of the standards in several areas, and these clarifications should apply retroactively and govern the existing contractual relationships of the parties. These areas include: passenger train revenues and costs; revenues from bridge traffic; revenues from shipments with

transit privileges; engineering costs; management fee; income from and alternative compensation for use of property over which subsidized service is performed; and specialized equipment costs.

The procedural amendments apply prospectively upon the effective date of this order.

Interpretations of the standards. The Office has considered some matters in this rulemaking, e.g., revenues from bridge traffic and engineering costs, which have resulted in clarification rather than amendment of the standards. It believes it may be beneficial to establish a procedure for issuing interpretation of the standards without resorting to formal rulemaking. New § 1125.1(e) provides that the Office will entertain petitions to interpret the intent or application of the standards. Where a request for a ruling arises from a dispute with other parties, the petitioner should identify the other parties and serve them with a copy of the petition. The other parties may support or oppose the petition by filing (and serving) a reply within ten days of receipt of the petition. Where the issue raised is of general interest, the Office may also issue a notice inviting public comment. The Office will issue an interpretation, unless it concludes that the matter raised requires amendment of the standards, in which case the Office will institute a rulemaking proceeding.

PARTIES FILING COMMENTS

Government. U.S. Department of Transportation; Office of Public Counsel; Delaware Transportation Authority; Maryland Department of Transportation; Commonwealth of Massachusetts, Executive Office of Transportation and Construction; State of Michigan, Department of Highways and Transportation; New Jersey Department of Transportation; New York Department of Transportation; Commonwealth of Pennsylvania, Department of Transportation; Commonwealth of Virginia Department of Highways and Transportation; Public Service Commission of Wisconsin.

Business. Agway, Inc.; Baker/Beech-Nut Corporation; Penn Central Transportation Company.

Railroad. Chessie System; Consolidated Rail Corporation; Hillsdale County Railway Company, Inc.; Lehigh Valley Railroad Company; Octoraro Railway, Inc.

Organization. National Industrial Traffic League.

ORDER

In light of the foregoing:

It is ordered, That Part 1125 of Subchapter B of Chapter X of Title 49 of the Code of Federal Regulations be amended by making the changes set forth below to the standards adopted on January 8, 1975 and amended on March 28, 1975, January 22, 1976 and March 26, 1976.

And it is further ordered, That this order shall become effective December 16, 1976.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Issued December 16, 1976 by Alan M. Fitzwater, Director, Rail Services Planning Office.

By the Commission.

ROBERT L. OSWALD,
Secretary.

1. Section 1125.1 is amended by revising paragraph (d) and by adding a new paragraph (e) to read as follows:

§ 1125.1 Purpose and scope.

* * * * *

(d) The standards set forth herein employ an interim formula for establishing an estimated first year subsidy payment. This estimate will serve as a basis for the subsidy offer within the context of section 304(c)(2) of the Act, as amended, and provide a framework for the negotiation of a subsidy agreement. In subsequent years the estimated subsidy payment will be based on the railroad's Financial Status Reports as specified in § 1125.9(f). The parties may agree in arm's-length negotiations to provisions which modify these standards, subject to review of such modifications by the Office. The Office would not expect to disapprove variations from the standards which are the product of arm's-length negotiations and which are shown to be reasonable in the light of the pertinent facts and circumstances. When an agreement has been reached, a copy shall be filed promptly with the Office for its review. The amount a subsidizer must offer under section 304(c)(2)(A), as amended, is the amount computed in accordance with the interim formula, or $1.00, whichever is the greater amount. The final payment will be adjusted based on data related to the subsidy period. Where an adjustment results in an increase in the estimated subsidy payment, the amount of such increase in excess of 15 percent of the estimated payment shall be treated as a carryover avoidable cost in the subsequent subsidy year unless the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent based on the data contained in one of the Financial Status Reports issued during the first 10 months of the subsidy year as required by § 1125.9(f) or the increase results from an expense preapproved by the subsidizer.

(e) Parties desiring an interpretation of the standards should file a written petition citing the section involved and setting forth their position and rationale. If the request arises from a dispute with other parties, the petitioner should identify those parties and serve each of them with a copy of the petition. Parties desiring to file a reply must do so within 10 days of their receipt of the petition. The Office will issue an interpretation, unless it concludes that the matter raised requires amendment of the standards, in which case the Office will institute a rulemaking proceeding.

2. Section 1125.3 is amended by revising the second sentence of the introductory paragraph and by revising paragraph (c)(4) to read as follows:

§ 1125.3 Interim subsidy payment.

* * * * *

The interim payment may be adjusted, by agreement of the parties, to take into account factors, such as rate increases and changes in traffic levels, which would make the sole use of base year data an inappropriate means of estimating the payment for the subsidy year or to conform to amendments to the standards made subsequent to the original agreement. * * *

* * * * *

(c) * * *

(4) Transportation costs shall be estimated, based on system average costs. The number of trips per year shall be based on the frequency of service performed at the time the notice is filed unless the parties agree to a different level. Labor costs for train crews shall be based on system average costs for each type of crew applied to the hours of service on the branch. The crew costs shall be classified into three major categories: yard, local/way and through. The straight time average cost per hour for each yard, local/way or through train crew member shall be calculated for Class I railroads by using the railroad's Employees, Service, and Compensation Report (Form B) for the base year. The calculation is made by adding together the straight time compensation, col. (9), and the constructive allowances, col. (11), and dividing this total by the straight time hours actually worked, col. (4). This process would be repeated for each yard, local/way and through train class of employee. For Class II railroads, the straight time average cost per hour for each yard, local/way or through train crew member shall be calculated in the same manner, using the railroad's payroll records for the base year. After the hourly rate is determined for each member, the cost per crew hour shall be calculated based on the exact size and consist of the crew currently serving the branch. The crew cost per hour is multiplied by the estimated hours that will be incurred in serving the branch during the subsidy period. The estimated direct crew costs must be increased to cover fringe benefits using the procedure described in § 1125.5(e). The railroad shall also furnish estimates of costs for the remaining transportation accounts using the final standards as a guide to their includability and basis of calculation.

§ 1125.4 [Amended]

3. Section 1125.4(a) is amended as follows:

* * * * *

(a) *Account 101—Freight.* The revenues assigned under this account shall be the actual revenues, including transit revenues, accruing * * *

* * * * *

4. The closing text of § 1125.4(a) is revised to read as follows:

All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all

other bridge or overhead traffic shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, *Provided, however,* That the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

5. Paragraph (b) of § 1125.4 is deleted.

6. Paragraph (c) of § 1125.4 is revised to read as follows:

* * * * *

(c) *Account 106—Mail; Account 107—Express.* The revenues assigned under these accounts shall be apportioned to the branch on the ratio of the miles that the shipment moved on the branch to the miles it moved on the system of the railroad but only if such revenues are earned by freight trains operating on the branch line.

* * * * *

7. Paragraph (d) of § 1125.4 is amended as follows:

(d) *Account 110—Switching; Account 113—Water transfers; Account 131—Dining and Buffet; Account 132—Hotel and restaurant* * * *

8. The Introductory paragraph of § 1125.5 is revised to read as follows:

§ 1125.5 Avoidable costs of providing service.

The avoidable costs of providing service on a branch are the total of the costs assigned or apportioned to the branch in accordance with this section. Costs apportioned under this section shall be derived from the latest Form R–1 or Form R–2 of the railroad filed with the Commission prior to the conclusion of the subsidy year. Labor costs must be identified separately for all accounts when costs are assigned on a direct basis. Amounts included for arbitraries, vacation, holiday and sick pay must also be identified separately.

* * * * *

9. Section 1125.5(a)(1) is amended as follows:

(a) * * *

(1) *Account 201—Superintendence; Account 202—Roadway maintenance* * * *

* * * * *

10. Section 1125.5(a)(2) is amended as follows:

(a) * * *

(2) * * * *Account 257—Power—transmission systems; Account 265—Miscellaneous structures; and Account 266—Depreciation.*

* * * * *

11. Section 1125.5(a)(3) is amended as follows:

(a) * * *

(3) * * * *Account 273—Public Improvements—Maintenance; Account 274—Injuries to persons; Account 275—Insurance; Account 276—Stationery and printing; Account 278* * * *

* * * * *

12. Section 1125.5 is amended by adding a new paragraph (a)(5), reading as follows:

* * * * *

(a) * * *

(5) *Account 269—Roadway machines; and Account 271—Small tools and supplies.* The costs under these accounts shall be assigned to the branch on the basis of the ratio that the branch amounts in Accounts 202–220 bear to the carrier's system total for the same accounts.

* * * * *

13. Section 1125.5(b)(1) is amended by adding at the end thereof the following new sentence:

* * * * *

(b) *Maintenance of Equipment*—(1) * * * The costs assigned under this account for specialized equipment devoted exclusively to branch line service shall be the actual costs assigned on a direct basis.

* * * * *

14. Section 1125.5(b)(2) is deleted.

15. Section 1125.5(b)(5) is amended by adding at the end of both the first and second paragraphs thereof, the following new sentence:

(b) * * *

(5) The costs assigned under this account for specialized equipment devoted exclusively to branch line service shall be the actual costs assigned on a direct basis.

16. Section 1125.5(b)(5)(54) is deleted.

17. Section 1125.5(b)(6) is amended as follows:

(b) * * *

(6) *Account 301—Superintendence; Account 302—Shop machinery; Account 304—Power plant machinery; Account 305—Shop and power plant machinery; Account 332—Injuries to persons; Account 333—Insurance; Account 334—Stationery and printing; Account 336—Joint maintenance of equipment expenses-Dr* * * *

* * * * *

18. Section 1125.5(c)(1) is amended as follows:

* * * * *

(c) * * *

(1) *Account 371—Superintendence; Account 372—Dispatching trains* * * *

* * * * *

19. Section 1125.5(c)(14) is amended to read as follows:

* * * * *

(c) * * *

(14) *Account 410—Stationery and printing; Account 411—Other expenses* * * *

* * * * *

20. Section 1125.5(e)(1) is amended by revising the second sentence and, by adding a new sentence at the end thereof, reading as follows:

* * * * *

(e) * * *

(1) * * * The percentage shall be developed for Class I railroads by using data from the railroad's latest Form R–1. * * *

The percentage shall be developed for Class II railroads in the same manner prescribed for Class I railroads, using the latest data available.

21. Section 1125.5(g) is revised to read as follows:

* * * * *

(g) *Property taxes.* (1) The amount of property taxes shall be the amount levied against the property on the branch, in those States where a true ad valorem tax is levied, based on the value of certain kinds of railroad property, such as track, land, buildings and other facilities.

(2) In States where property taxes are assessed on the basis of a formula of a State-wide valuation of property and the branch or branches are included in the valuation of the railroad operating the service, the tax on each branch shall be based on the distribution of the assessment by the State to that branch and the application of the appropriate tax rate or rates.

(3) In States where the real property taxes are assessed and levied against the owner of the property but the rolling stock is assessed to the railroad operating the service on the basis of a formula of a State-wide valuation of property, the tax on rolling stock attributable to each branch shall be determined as follows:

(i) Find the percent which the cost of equipment as used in the formula is to the total of all property cost as used in the formula;

(ii) Apply that percentage to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each branch on the basis of car and locomotive unit miles on the branch to total car and locomotive unit miles in the state;

(iv) Apply appropriate tax rate or rates to the allocated assessment thus determined.

* * * * *

22. Section 1125.5(h)(2) is amended to read as follows:

* * * * *

(h) * * *

(2) *Account 504—Rent from locomotives; Account 506—Rent from floating equipment; Account 507—Rent from work equipment; and Account 509—Income from lease of road and equipment* * * *

* * * * *

23. Section 1125.5(i)(2) is amended to read as follows:

* * * * *

(i) * * *

(2) *Account 537—Rent for locomotives; Account 539—Rent for floating equipment; and Account 542—Rent for leased roads and equipment.* If the equipment is used exclusively for branch traffic, the costs assigned under these accounts shall be the actual branch costs assigned on a direct basis. Common rents shall be apportioned to the branch on the basis of the ratio of applicable locomotive or floating equipment days or miles, as used for billing purposes on the branch, to the total of those days or miles on other lines of the railroad.

* * * * *

24. Section 1125.5(j) is amended by revising the first full sentence of the first paragraph to read:

* * * * * *

(j) * * * For Class I railroads, the on-branch costs for time-mileage freight-train cars shall be calculated on the basis of the railroad's average costs per day and per mile. * * *

* * * * * *

and by adding at the end thereof, following subsection (5), a new paragraph, reading as follows:

For Class II railroads, the on-branch costs for time-mileage freight-train cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

25. Paragraphs (k)(2) through (4) of section 1125.5 are revised to read as follows:

* * * * * *

(k) * * *

(2) The following through-train, single-line, variable unit costs shall be developed by a Class I railroad by applying Rail Form A to data contained in its latest Form R–1 filed with the Commission:

(i) Normal Rail Form A carload terminal cost per carload by car type.

(ii) Modified Rail Form A, carload terminal cost per carload by car type (i.e., (1) substitute an intertrain switching cost separated between mileage and other than mileage cars, in place of a roadtrain to industry switching cost; (2) substitute modified car ownership costs per car day for two days developed in accordance with Section 1125.5(j) above, for the standard Rail Form A day ownership cost).

(iii) Rail Form A per hundredweight terminal cost.

(iv) Rail Form A cost per car-mile by car type.

(v) Rail Form A cost per ton-mile.

(vi) Rail Form A cost per car interchanged, separated between mileage and other than mileage cars.

These costs shall be applied by Class I railroads in accordance with the procedure set forth below in § 1125.5(k)(3).

(3) Calculations by car type.

(i) The sum of all terminal costs incurred off the branch line shall be calculated by multiplying the modified terminal cost per carload by car type, subsection (2)(ii) above, by the total number of carloads originated or terminated on the branch line during the subsidy year. To this amount add the normal terminal cost per carload by car type, subsection (2)(i) above, times the number of carloads which originated or terminated on the branch that are local to the railroad serving the branch.

(ii) The sum of the hundredweight terminal costs incurred off the branch line shall be calculated by multiplying the hundredweight terminal cost, subsection (2)(iii) above, by the number of hundredweight of freight originated or terminated on the branch that are local to the railroad serving the branch.

(iii) The sum of the line-haul car-mile costs incurred off the branch line shall be calculated by multiplying the car-mile cost by car type, subsection (2)(iv) above, by the loaded car-miles generated off the branch line by cars originated or terminated on the branch during the subsidy year. Where overhead movements to and from the branch have been included in the on-branch cost calculation under other sections of § 1125.5, the related loaded car-miles shall be excluded from this calculation.

(iv) The sum of the line-haul ton-mile costs shall be determined by multiplying the ton-mile cost, subsection (2)(v) above, by the total ton-miles of revenue-freight incurred by the railroad on its lines, other than the branch lines, for revenue freight originated or terminated on the branch during the subsidy year.

(v) The interchange cost shall be calculated by multiplying the cost per car interchanged, subsection (2)(vi) above, by the number of carloads of traffic interchanged at a point off the branch line and originated or terminated on the branch.

(4) Class II line-haul railroads shall calculate off-branch costs as follows:

(i) The estimated system variable expenses are calculated by multiplying the sum of the total operating expenses (Schedule 2002, Pub. L. 54, col. (b)), net rents (Schedule 300, L. 21, col. (b)), and tax accruals, less federal income taxes (Schedule 350, L. 18, col. (b) less Pub. L. 13, col. (b)) in the carrier's latest Annual Report (Form R–2) by .78, the three-year composite variability ratio for all Class I railroads.

(ii) The cost per ton-mile of revenue freight is calculated by dividing the amount developed in step (i) by the system total ton-miles of revenue freight (Schedule 2601, L. 25, col. (d)) in the carrier's latest Annual Report (Form R–2).

(iii) The cost developed in step (ii) shall be applied to the total revenue ton-miles of traffic which is attributable to the branch and which moves over other portions of the railroad's system.

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26. Section 1125.5(k)(5) is deleted.

27. Section 1125.5(l) is amended to read as follows:

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(1) *Administrative costs.* One percent of total annual revenues attributed to the branch shall be allowable as an avoidable cost to the railroad to cover all costs of administering the subsidy program.

* * * * * *

28. Section 1125.5 is amended by adding new paragraphs (o), (p), (q), (r) and (s), reading as follows:

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(o) *Traffic—Account 351—Superintendence; Account 352 — Outside agencies; Account 353—Advertising; Account 354—Traffic associations; Account 355—Fast freight lines; Account 356—Industrial and immigration bureaus; Account 357—Insurance; Account 358—Stationery and printing and Account 360—Other expenses.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis and will be assignable only if the size of the railroad's operation (measured in total mileage, gross revenues, gross ton-miles or car-miles) is increased by more than 25 percent, as a result of operating the subsidized service, or the individual line being operated under a subsidy agreement generates $10,000,000 or more in gross revenues per annum.

(p) *General—Account 451—Salaries and expenses of general officers; Account 452—Salaries and expenses of clerks and attendants; Account 453—General Office supplies and expenses; Account 454—Law expenses; Account 455—Insurance; Account 457—Pensions; Account 458—Stationery and printing; Account 460—Other expenses; Account 461—General joint facilities-Dr.; and Account 462—General joint facilities-Cr.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis and will be assignable only if the size of the railroad's operation (measured in total mileage, gross revenues, gross ton-miles or car-miles) is increased by more than 25 percent, as a result of operating the subsidized service, or the individual line being operated under a subsidy agreement generates $10,000,000 or more in gross revenues per annum.

(q) *Deadheading, taxi and hotel costs.* The costs assigned under this section shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi and hotel costs. The amounts under this section shall not be included under the wage accounts in paragraphs (c) (3) and (7) of § 1125.5.

(r) *Overhead movement costs.* The costs assigned under this section shall be the actual costs incurred in moving overhead in order to provide service to the branch. The amounts shown shall be limited to transportation (§ 1125.5(c)); equipment (§§ 1125.5(b) (1) and (5)); and freight train cars (§ 1125.5(j)). The amounts shown under this section shall not be included under other sections of these regulations.

(s) *Termination costs.* The costs assigned under this section shall be the actual costs reasonably and necessarily incurred as a result of terminating service to the subsidized branch. These costs shall not include any costs which the railroad would have incurred had the branch not been operated under the subsidy program. The 15 percent ceiling contained in § 1125.1(d) is not applicable to these costs unless such costs were included in the estimated subsidy payment.

31. Section 1125.9(f) is amended by revising the third sentence to read as follows:

* * * * * *

(f) * * * Unless the parties agree otherwise, the last Financial Status Report filed in the first ten months of the subsidy year will be the basis for negotiating the estimated subsidy payment for the subsequent year's agreement. The estimated payment may be adjusted, by agreement of the parties, to take into account factors, such as rate increases and changes in traffic levels, which would make the sole use of base year data an inappropriate means of estimating the

payment for the subsidy year or to conform to amendments to the standards made subsequent to the original agreement.

Appendices I and II [Amended]

32. Both Appendix I and Appendix II to the standards are amended by deleting item number 4, "Passenger", in each and substituting the following:

[Deleted.]

[FR Doc.76-37481 Filed 12-20-76;8:45 am]

federal register

TUESDAY, DECEMBER 21, 1976

PART VIII:

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

SAFETY AND HEALTH STANDARDS AND REGULATIONS FOR CONSTRUCTION

Ground-Fault Protection

Title 29—Labor

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

[Docket No. S–102]

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Ground-Fault Protection

Pursuant to sections 6(b) and 8(c) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657) (the Act), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, Parts 1910 and 1926 of Title 29, Code of Federal Regulations, are hereby amended by revising §§ 1910.309(c) and 1926.400(h) to require either the use of ground-fault circuit interrupters or the implementation of an assured equipment grounding conductor program on construction sites.

I. BACKGROUND

Each year many workers on construction sites suffer electric shock using portable electric tools and equipment. The nature of the injuries, including those caused by ground faults, ranges from electrocutions to minor and serious secondary injuries. A secondary injury occurs when a worker recoils from an electric shock and, as a result of this recoil, sustains an injury. Depending largely on the surrounding physical conditions, such an accident can result in a bruise or a broken bone or a fatal fall. An electrocution occurs when the shock current is in excess of about 70 milliamperes causing ventricular fibrillation and death. Typically, these injuries occur when employees contact electrically energized parts. It is usually the frame of the tool that becomes accidentally energized due to an electrical fault which provides a conductive path to the tool casing. This conductive path can occur instantaneously or can develop gradually over a relatively long period of time. When the worker contacts the energized tool, a fault to ground may occur. This means an unwanted path or circuit of electricity develops from the tool through the man to ground. The amount of current that flows through the worker depends, primarily, upon the resistance of the fault within the tool, the resistance of the worker, and the resistance of the path from the worker back to the electrical supply.

Moisture in the atmosphere may contribute to the electrical fault by intensifying both the conductive path within the tool and the external path back to the electrical supply. Moisture may also increase the severity of the shock by decreasing the worker's contact resistance. Consequently, the extent of the hazard increases with an increase in the amount of moisture at the jobsite.

One method of protection against injury caused by this electrical fault is the use of an equipment grounding conductor. This equipment grounding conductor grounds the exposed noncurrent-carrying, metal parts of tools or equipment and carries off the leakage current thus limiting the voltage on the tool frame by providing a low resistance path to ground. When the leakage current increases beyond the setting of the overcurrent device protecting the circuit (usually 15 or 20 amperes), the device trips and interrupts the current.

Another method of protection is the utilization of a ground-fault circuit interrupter (GFCI). This device continually monitors the current and detects current leaking to ground via a path outside of the circuit conductors. If the leakage current to ground (either through the equipment grounding conductor or through a person) exceeds the trip level, the circuit is interrupted quickly enough to prevent electrocution.

II. HISTORY OF THE REGULATIONS

In accordance with section 6(a) of the Act, the Occupational Safety and Health Administration (OSHA) adopted by reference in §§ 1910.309 and 1926.400 of its general industry and construction regulations the 1971 National Electrical Code, NFPA 70–1971, ANSI C1–1971 (NEC), 37 FR 3431 (1972). In addition to requiring proper grounding of electrical tools, the NEC contains, in section 210–7, the following provision:

> All 15- and 20-ampere receptacle outlets on single-phase circuits for construction sites shall have approved ground-fault circuit protection for personnel. This requirement shall become effective on January 1, 1974.

On November 8, 1973, the Advisory Committee on Construction Safety and Health, established under the Construction Safety Act, recommended to the Assistant Secretary of Labor for Occupational Safety and Health that the effective date of the GFCI requirement be suspended pending further study. A request for postponement was also made by the National Constructors Association on November 19, 1973. Accordingly, on December 4, 1973, a notice was published in the FEDERAL REGISTER (38 FR 33397) amending §§ 1910.309 and 1926.400, to defer the January 1, 1974 effective date pending reconsideration of the requirement for GFCI's.

In order to obtain the information necessary for such reconsideration, a notice of public hearing was published in the FEDERAL REGISTER on December 10, 1973 (38 FR 33983), and the issues subject to comment were listed on December 26, 1973 (38 FR 35235). A public hearing was held on February 26, 1974.

An issue on the scope of the requirement was raised in several comments and in the course of the hearing. Specifically, the issue was whether the GFCI requirement should be expanded from temporary wiring on construction sites to include any workplace that was "wet, damp, or conductive" and where electrical tools were used. In response to this, OSHA published an Advance Notice of Proposed Rulemaking on June 11, 1974, (39 FR 20499) requesting information regarding this expansion of scope.

After evaluating all the comments and evidence received in response to the various FEDERAL REGISTER notices, OSHA concluded that a requirement for GFCI's on any wet, damp, or conductive location, rather than only on construction sites, was not necessary. This conclusion was based on the permanent nature of the electrical installations and the condition and maintenance of electrical tools and equipment used in general industry, as contrasted with the temporary wiring, which is frequently moved, and the rough use, abuse, and the relatively poorer condition and maintenance of electrical tools and equipment found on construction sites. Accordingly, OSHA prepared and submitted a draft of a proposed ground-fault circuit protection standard to the Advisory Committee on Construction Safety and Health at its October 30, 1974 meeting. This draft standard would have required ground-fault circuit interrupters for all 120-volt receptacle outlets on the temporary wiring of construction sites, which were used by employees. The Advisory Committee recommended to continue to hold the ground-fault circuit protection standard in abeyance, pending independent study of the need and efficacy of GFCI's.

On April 7, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 15390; correction notice, 40 FR 18468). In this notice, OSHA proposed to amend Title 29, Code of Federal Regulations, §§ 1910.309(c) and 1926.400(h) by revoking the requirements for GFCI's on construction sites, on the view that sufficient data had not been received showing such a requirement to be necessary to the safety and health of employees. The proposal notice indicated that the revocation could be changed if there were a later determination that complete and accurate information was available which warranted mandatory utilization of GFCI's on construction sites.

In response to this notice, OSHA received 131 comments, including six requests for a public hearing. Thereupon, a notice of public hearing was published on September 2, 1975 (40 FR 40170). In this notice, OSHA requested public comment on numerous issues which would enable OSHA to determine which of the following actions to take for protection of personnel on construction sites: (a) revocation of the existing requirement for GFCI's; (b) retention of the existing requirement for GFCI's; or (c) a requirement for GFCI's or an alternate grounding maintenance program, which would require scheduled and recorded equipment inspection and maintenance, covering all tools, cords, and wiring on the jobsite. The public hearing on the proposal was held on December 9 and 10, 1975, in Washington, D.C., and the hearing record was certified on March 26, 1976.

In accordance with section 6(b) of the Act, Executive Order 11821 (39 FR 41501), OMB Circular No. A–107 (January 28, 1975), and Secretary's Order No. 15–75 (40 FR 54484) and administrative instructions thereto (U.S. Department of Labor Temporary Directive No. 1, No-

vember 24, 1975), OSHA assessed the technical feasibility and economic and inflationary impacts of its proposal, including the impacts of each of the alternatives mentioned in the September 2, 1975, hearing notice. On April 27, 1976, OSHA published, in the FEDERAL REGISTER (41 FR 17576), a notice certifying that none of the alternatives would be a major action which would necessitate further inflationary impact evaluation or the preparation of an inflationary impact statement. This certification was based on the economic identification criteria specified in section 5(c) of Secretary's Order No. 15-75. In addition, the notice announced the availability of the technological feasibility and economic assessment, and interested persons were given until May 27, 1976, to submit written comments on these matters.

The record of this rulemaking proceeding includes all of the evidence before the Advisory Committee in making its recommendations and all the evidence presented to the Assistant Secretary in developing the standard including comments and evidence in response to all of the aforementioned FEDERAL REGISTER notices, as well as all evidence adduced at two informal hearings. Also included in the record is the technological feasibility and economic impact assessments, and the public comment thereto. This entire record was thoroughly reviewed and evaluated in reaching the determinations set forth below and in developing this final standard.

III. PRINCIPAL ISSUES INVOLVED

The evidence submitted into the record is summarized and evaluated in the following discussions of each issue. The numbers in brackets refer to specific references in the December 9 and 10, 1975, hearing exhibits (Ex.) which included the entire record to date, hearing transcript page numbers (Tr.), and post-hearing comments (PH). The following are the principal issues involved in this rulemaking proceeding:

1. *Whether 120-volt, ground-fault accidents are occurring on construction sites in sufficient quantity to warrant regulatory attention.* The record contains descriptions of hundreds of electrocutions [Ex. 2, 5, 13, 14, 31]. Although many of the reports did not contain sufficiently detailed information to accurately determine the specifics of each electrocution, enough information was available to make a determination that approximately 70 of these fatalities were 120-volt, ground-fault electrocutions that occurred on construction sites. These accidents were reported during the years of 1970 to 1975. A review of the evidence indicates a substantial probability of greater occurrence of death, due to poor reporting and the possibility of some deaths going unreported as electrocutions because of the mistaken belief that they were caused by heart failure.

Several estimates were made of the annual number of 120-volt, ground-fault electrocutions occurring on construction sites. One commenter, using two different extrapolations of accident data, estimated the number to be 34 deaths each year [Ex. 35]. Additionally, an extrapolation of the 41 deaths found in the OSHA State Survey [Ex. 5] indicates that about 30 of these fatalities occur nationally per year.

One witness introduced data concerning electrocutions in Dade County, Florida [Tr. 112-113]. During the last 19 years, Dade County experienced a total of 105 on-the-job electrocutions which corresponds to a yearly average of 5.5. Also, the data included six ground-fault electrocutions (120-volt) on construction sites over the last 5 years, which is an average of 1.2 per year. These two averages give a 0.218 ratio. From the *Vital Statistics of the United States*, a different witness [Ex. 18 of the February 26, 1974 hearing] calculated the national average of all on-the-job industrial electrocutions to be 208. Multiplying this national average of 208 by the 0.218 ratio yields an estimate of about 45 ground-fault electrocutions on construction sites per year.

Thus four extrapolations of different data have been performed with each yielding an estimate of 30 to 45 electrocutions per year. Therefore, it appears that at least 30 such electrocutions are occurring each year on construction sites.

The accident data discussed here are those electrical accidents resulting in death, which is, of course, the most severe accident caused by 120-volt ground faults. It is abundantly clear that these deaths are occurring in sufficient numbers to warrant regulatory protection. There is evidence in the record, furthermore, that indicates the occurrence of a substantial number of nonfatal injuries for every fatality [Ex. 18 of the February 26, 1974 hearing]. These injuries, some of which are serious, also warrant regulatory action.

2. *Whether proper equipment grounding can prevent such accident on construction sites.* Present regulations in the NEC and adopted by OSHA require equipment grounding conductors for most 120-volt tools and circuits on construction sites. Essentially all of the witnesses who addressed this issue agreed that equipment grounding conductors, if used and maintained properly, are effective in preventing electrical accidents [Ex. 1, 12, 15, 26, 28, 37; Tr. 21-22, 302, 370, 429; PH 2, 5]. However, a review of the evidence strongly indicates that the equipment grounding conductor is not always properly maintained, even by the most elementary precautionary procedures [Ex. 5, 14]. In addition, there is evidence that the equipment grounding conductor is often intentionally circumvented, such as by clipping the third prong or attaching a three prong plug to a two wire extension cord. Furthermore, as noted by some witnesses, tools and cords on construction sites are exposed to rough use and abuse, and the equipment grounding conductor can accidentally become discontinuous by the rough handling [Ex. 14, 35]. As a result, the effectiveness of the equipment grounding conductor can be defeated without the knowledge of the employee it is supposed to protect.

A review of the accidents also shows that many employees are not fully aware of the hazards involved in using electric tools. For example, at least three of the reports showed that employees had received shocks from equipment they were using, but continued using them until someone was electrocuted [Ex. 5, 13].

A few of the electrocutions on which evidence was submitted apparently occurred with the use of tools which were properly grounded; however, the overwhelming majority of the ones which allowed a specific determination to be made were caused by a malfunction of a part of the equipment grounding conductor [Ex. 5]. Frequently, for example, a defect in the grounding conductor, such as a break, allowed it to come into direct contact with the ungrounded conductor. However, an equipment grounding conductor alone cannot provide complete protection under all circumstances. For example, if a fault current of about 3 or 4 times the rating of the circuit breaker occurs during the use of the tool, sufficient fault current may flow through the person holding the tool and cause his electrocution before the circuit breaker could open.

Based on the evidence, including the occurrence of a significant number of ground-fault accidents and the evidence that equipment grounding conductors are, in many cases, not adequately and effectively maintained, it appears that although proper equipment grounding conductors can prevent such accidents, the existing equipment grounding conductor regulations are inadequate to provide the necessary protection. Accordingly, OSHA concludes that there is a need to supplement the existing equipment grounding conductor requirements to adequately protect employees from ground-fault accidents resulting in injuries and fatalities.

3. *Whether GFCI's can supplement the present equipment grounding conductor requirements to prevent such accidents on construction sites.* The ground-fault circuit interrupter is a fast-acting device which senses small current leakage to ground and, in a fraction of a second, shuts off the electricity and "interrupts" its faulty flow to ground. Placed between the electrical service and the tool it serves, the GFCI continually matches the amount of current going to and from the tool along the normal path of the circuit conductors. Whenever the amount "going" differs from the amount "returning" by a set trip level, 5mA±1mA on currently approved GFCI's, the GFCI interrupts the electric power within $\frac{1}{40}$ of a second. This difference in current is called leakage current to ground and the path it takes to ground could be through a person—in which case, the rapid response of the GFCI is fast enough to prevent electrocution. This protection provided by the GFCI is independent of the condition of the equipment grounding conductor. Thus, the GFCI can provide protection even where

the equipment grounding conductor has become ineffective.

By relating the capability of a GFCI to the facts reported concerning the accidents described in the record [Ex. 2, 5, 13, 14, 31], it can be shown that GFCI's could have prevented nearly all of the 120-volt, ground-fault electrocutions. For example, one construction site fatality occurred after the victim had mistakenly connected the "hot" conductor to a cord connector's equipment grounding conductor terminal in trying to repair an extension cord. Upon plugging the portable saw into the cord, he was electrocuted [Ex. 5]. If a GFCI had been in use, it would have detected and interrupted the current flow from the energized tool through the man to ground. Another construction worker was electrocuted when he picked up a new electric hand tool [Ex. 5]. All the cords were properly wired, but an altered plug on one of the extension cords he was using was inserted into a receptacle with the plug's grounding prong in contact with the "hot" conductor's terminal. The use of a GFCI could have similarly prevented this accident. Still another construction worker was electrocuted as he was helping a coworker install metal studs [Ex. 5]. The extension cord that the coworker was using had portions where bare conductors were exposed by insulation damage. When the coworker pulled on the extension cord, one of the bare spots hit the metal stud on which the victim was leaning. A ground-fault current then flowed from the exposed conductor through the metal stud (which was in contact with it), through the worker (who was leaning on the stud), and back to ground through the properly grounded screw gun he was holding. The use of a GFCI could also have prevented this electrocution.

Some witnesses stated that GFCI's do not provide the same degree of protection against ground faults as equipment grounding [Ex. 12, 28; PH 5]. These witnesses pointed out that, since GFCI's allow a fault current to pass to ground for 1/40 of a second before tripping, GFCI's do not prevent electric shock and the secondary injuries which can result from such shock [Ex. 12; PH 5]. They also contended that equipment grounding prevents electric shock and provides greater protection to employees against ground fault [Ex. 28; PH 5]. However, a requirement for GFCI's would be in addition to, not in lieu of, the equipment grounding conductor requirements and would serve as backup protection in circumstances when the equipment grounding conductor does not provide protection.

4. *Whether GFCI's can be successfully used on construction sites.* Experience using GFCI's under varying weather and jobsite conditions was reported into the record by State and local electrical inspectors [Ex. 3, 7, 8, 9, 10, 11], various contractors and contractor associations [Ex. 2, 3, 4, 12, 28; Tr. 274–276, 283–284, 287–289, 293], Federal agencies [Ex. 2, 3], an electric utility [Ex. 27], and others [Ex. 14]. In general, the contractors claimed that GFCI's were unsuitable for use on construction sites due to "nuisance tripping," which resulted in downtime. Others, including Federal and local government authorities who have enforced the GFCI requirement on a local level based on their adoption of the NEC, reported that the devices could be used successfully with proper installation and maintenance of electrical tools and circuits.

The term "nuisance tripping," as used throughout the rulemaking proceeding, connoted two categories of GFCI tripping: (1) "false trips," i.e., trips due to such causes as malfunctioning GFCI's or electromagnetic interference; and (2) "intended trips" caused by leakages in excess of the trip level. This distinction should be clearly understood. The term "nuisance tripping" by itself is imprecise and often misleading, since all tripping may, in fact, be considered a nuisance. Yet, with this distinction in mind, "intended tripping" reflects the proper operation of the GFCI and indicates either a hazard to employees or misapplication of the GFCI which can be remedied.

The aggregate experience of the hearing witnesses and commenters demonstrates that tripping is caused by: (1) Wet cord connectors and tools; (2) Tools and cords in poor condition (especially in wet environments) or faulty tools and cords; (3) Extremely long circuits (over 500 ft.); (4) Too many tools on one GFCI; (5) Improper installation of a GFCI (such as a single pole GFCI on a multiwire circuit); (6) Faulty GFCI's; (7) Electromagnetic interferences; and (8) Power line transients.

The first two pose a serious hazard to the employee and the next three are misapplications of the GFCI. Trips due to these five causes are therefore "intended tripping." Therefore, with the elimination of improper GFCI usage, all intended trips would result from and be indications of hazardous conditions. Only the tripping caused by the last three, on the other hand, are "false tripping." The problems of "false tripping" caused by the last two items have apparently been overcome by the affected manufacturers [Ex. 1, 14; Tr. 338; PH 3]. (Some makes were not susceptible to either type of tripping [Tr. 443].)

Some commenters suggested that a trip level of 5mA was too low and contributed to the "nuisance tripping." These commenters suggested that trip levels of 15 or 20mA, or even 30mA, would be more appropriate. However, there is uncontroverted evidence in the record showing the "let-go" current threshold for construction workers to be 9mA [Ex. 2; Tr. 77]. (This "let-go" threshold is the current at which some of the people could not let go of an energized object held in the hand, possibly resulting in an injury or fatality in the absence of some form of protection.) Increasing the trip level would therefore increase the probability of a worker's being injured in spite of the use of a GFCI, because a hazardous ground-fault current which is less than the "higher" trip level but greater the "let-go" threshold can, in fact, occur. Furthermore, the trip level has a negligible effect on the sensitivity of a GFCI to "false tripping," and there is evidence in the record that increasing the trip level to 10 or 15mA (both of which are beyond the "let-go" threshold) would have a minor effect on the incidence of "intended tripping" [Ex. 27; Tr. 178, 197, 355]. Therefore, since increasing the trip level would not significantly reduce the incidence of tripping but would expose a worker to an increased probability of being injured, OSHA has concluded that a trip level of 5mA (with a tolerance of ±1mA) is feasible and necessary for the protection of employees.

Much of the evidence submitted on the frequent tripping of GFCI's was based on the use of earlier models with trip levels from 2.2mA to 5mA. However, the trip level of currently manufactured GFCI's is now 5mA ± 1mA, which will eliminate nonhazardous tripping from leakages less than 4mA [Tr. 16–17, 21]. Furthermore, the evidence submitted by the Puget Sound Power & Light Company indicated that all the trips experienced in their latest study were "intended" trips, because the leakages were, in fact, greater than 4mA [Ex. 27].

Some hearing witnesses claimed that tripping from wet tools and connectors caused serious downtime problems and called this "nuisance tripping." They also claimed that wet tools and connectors posed no hazard [Ex. 28; Tr. 311, 317–319, 371–378]. However, with a cord connector in wateer, hazardous leakages can develop not only to the equipment grounding conductor but to anyone who picks up that connector and provides a path to ground. This leakage is not limited to the face of the connector but also develops to any wetted portion of it.

Additionally, tools with high leakage currents (greater than 5mA), which might be caused, for example, by a build up of carbon or other conductive particles inside the tool, also represent hazards. If the leakage is below approximately one ampere and the equipment grounding conductor is of a low resistance, no shock should be perceived. However, since the body provides a parallel path to ground through which leakage current passes, the current flow through the body increases with increasing grounding conductor resistance. Thus, if the resistance of the equipment grounding conductor is significantly greater than 1 ohm or is intermittent, even tools with small leakages become hazardous.

The evidence also showed that the amount of tripping can be reduced by certain practices and procedures which in many cases also help reduce the hazard. Triping caused by wet connectors and tools can be reduced by not exposing them to excessive moisture [Ex. 7, 12, 14] and by using waterproof or sealable connectors [Ex. 7, 14; Tr. 310–311]. Tools and connectors can also be cleaned, replaced, or repaired, if necessary, to reduce tripping [Ex. 7, 12, 14; Tr. 200]. Providing more GFCI's can prevent tripping caused by the cumulative leakage of several tools, and locating them closer to the workmen can prevent tripping caused by leakages from extremely long

circuits [Ex. 14; Tr. 467–468]. In addition, many jurisdictions reported that after initial problems of excessive tripping, utilization of the above procedures eliminated the difficulties. In light of the above, OSHA believes that GFCI's can be successfully used on construction sites without excessive tripping, if certain practices and procedures are utilized. Furthermore, OSHA concludes that the use of GFCI's on construction sites will work to significantly reduce the amount of ground-fault accidents, and that it is technologically feasible to use them without interference with the normal safe operation of the jobsite.

5. *What is the estimated cost of implementing the requirement for GFCI's on construction sites?* The commenters used various methods of estimating either their own costs or those of the entire industry. Two large companies gave estimates of their own projected installation expenditures if GFCI's were required on construction sites [Ex. 12, 15]. Using these estimates and 1974 construction values (all the estimates in this section are based on 1974 construction values which were the latest figures available), an installation cost of 30 to 40 million dollars can be extrapolated for the construction industry. An electrical contractor's association estimated an installation cost of $34.5 million based on the increase in the cost of temporary wiring [Ex. 28]. These commenters estimated an additional cost of 1 to 2 times the cost of installation for annual maintenance expenses. These include the costs of lost production due to tripping, "extra" maintenance of tools, cords, and connectors, and replacement costs. However, among contractors, maintenance costs would vary in inverse proportion to the effort expended to reduce "intended" tripping from improper electrical installations and defective tools.

Another trade association estimated an initial cost of complying with a standard requiring GFCI's to be $10.3 million for approximately 70 percent of its membership [Tr. 299]. Based on 70 percent of the association's 1975 construction receipts [PH 5], this can be extrapolated to about $40 million for the entire construction industry.

By using a hypothetical building project as a model, a witness estimated that installing GFCI's would add approximately 0.05 percent to 0.06 percent to the cost of non-residential construction [Ex. 13]. Using 0.06 percent as a basis for projecting the cost for the entire construction industry, the initial cost for installing GFCI's is $80.9 million. However, the witness' assumptions lead to an over-estimation of the cost. For example, his assumptions call for a one-to-one relationship of GFCI's to employees using handtools, but other witnesses were assuming a more realistic ratio of at least two employees per GFCI [Ex. 12; Tr. 282]. Dividing the estimate of $80.9 million by a factor of two brings it into line with the other estimates of initial cost.

All of these cost estimates are, therefore, in the range of 30 to 40 million dollars for the installation of GFCI's and an additional expense of 1 to 2 times this amount for maintenance. The total cost would then average $87.5 million for the first year. However, some of the costs included in the maintenance expenses are those needed to bring tools and cords into compliance with current safety standards. Therefore, some of these maintenance costs are not attributable to the requirement for GFCI's. Furthermore, as experience is gained, these maintenance costs would be further reduced by using improved techniques and equipment.

The "Ground-Fault Circuit Protection, Preliminary Assessment of Technological Feasibility and Economic Impacts" prepared for OSHA by Arthur Young and Company estimated the annualized cost (annual cost plus 20% of the initial cost) to be as high as $73.5 million. This estimate generally agrees with the previous extrapolations of the witnesses' data.

In response to the request for comments on this assessment, one of the hearing participants submitted (comment 8) an estimated annual cost of about $600 million for GFCI's. This estimate included seven component factors, one of which was an annual "spurious" tripping cost of $540 million, based on a trip rate of 18.57 trips per GFCI per year and a cost of $30 per trip for a total of 1 million GFCI's. However, it appears that the trip rate of 18.57 is based on an unrepresentative installation, which experienced excessive tripping from electromagnetic interference—a problem which has since been corrected in newer-model GFCI's. Furthermore, this same company on a different construction site, which utilized a different type GFCI that protects two circuits and that was not subject to "false" tripping, experienced only 10.2 trips per GFCI per year [Tr. 283]. This is equivalent to a 5.1 trip rate for GFCI's which protect only one circuit, and is consistent with the 5.2 trip rate which was experienced by another witness' company [Ex. 12] and which was utilized in the preliminary assessment. Additionally, the $30 per trip cost submitted in comment 8 is a substantial over-estimate. This commenter claimed that 10 workers would be idled for each trip at a cost of $12 per hour per worker. This estimate appears to be too high. We think that a better estimate of the cost of idling workers would be based on the evidence that in 1974, the average construction worker earned about $6.77 per hour (Statistical Abstract of the U.S., 1974), and assuming a 25 percent add-on for increases and fringe benefits, his total compensation would be about $8.50 per hour. Normally, only two or three power tools can be accommodated by a 15- or 20-ampere circuit without overload; and, therefore, only two to three employees would thus be $91 million, and not $600 Using this commenter's estimate of 15 minutes of downtime per trip, the tripping cost would be about $5 per trip. These more representative numbers (a 5.2 trip rate and $5 per trip cost) would then yield an annual spurious tripping cost of $26 million rather than $540 million. Without correcting the other six component factors, in comment 8, which were also high, the annual cost of GFCI's would thus be $91 million, and not $600 million, for the construction industry.

Additionally, the hearing testimony and comments indicated that a significant number of jurisdictions already require GFCI's on construction sites [Ex. 7; Tr. 47]. In these jurisdictions, the contractors have presumably installed GFCI's, and no further expense would be incurred by an OSHA ground-fault protection requirement. This factor was not considered in any of the estimates and would also tend to reduce the expenditures needed to comply with an OSHA standard requiring GFCI's. However, though it would appear to have a significant effect, this factor cannot be precisely calculated.

6. *Whether there is a method other than GFCI's of supplementing the present equipment grounding conductor requirements to prevent 120-volt, ground-fault accidents on construction sites.* The notice of hearing discussed alternatives to GFCI's and indicated that OSHA was considering the possibility of requiring, as an alternative to GFCI's, a scheduled and recorded equipment inspection and maintenance program. Much evidence was received on this possibility.

Some of the witnesses stated that their safety records demonstrated that GFCI's were not needed to protect their employees from electrical hazards [Ex. 12, 15; Tr. 300–302]. These companies, however, maintain their electrical equipment with regular inspections and tests and have training programs to educate their employees in electrical safety [Ex. 12, 15; Tr. 276–277, 307]. Therefore, the witnesses claimed that an alternative means of protection from 120-volt, ground-fault hazards could be provided by an assured equipment grounding conductor program [Ex. 1, 12, 15].

Several companies and contractor associations submitted statistics on their experiences on construction sites using similar programs. For example, one association reported over 1.3 billion man-hours of construction work (which is equivalent to about ⅛ of one year's total construction man-hours) with only 69 incidents involving contact with 120 volts [Tr. 300–301]. These 69 contacts resulted in four lost-time injuries and one fatality, which they claimed could not have been prevented by the use of a GFCI. One company reported a construction experience of 500 million man-hours with one lost-time injury and no fatalities [Ex. 12]. In both examples, the companies involved regularly check their tools and cords for compliance with OSHA's standards for proper equipment grounding [Ex. 12; Tr. 307]. The experience of these companies is that an assured equipment grounding conductor program is effective in preventing 120-volt, ground-fault accidents. Additionally, the chairman of an NEC technical subcommittee on the requirements for ground-fault circuit protection for personnel presented his recommendation that an assured equipment grounding

conductor program be accepted as an alternative to GFCI's [Tr. 430–433, 440–441].

Some witnesses claimed that an assured equipment grounding conductor program does not provide the same measure of safety as the use of GFCI's [Ex. 14]. The argument presented in support of this view is that an assured equipment grounding conductor program would include only periodic checks of the condition of the equipment, whereas a GFCI affords continuous monitoring of the equipment [Ex. 14; Tr. 133–134]. Therefore, it is argued that an assured equipment grounding conductor program might not protect employees when the equipment grounding conductor malfunctions subsequent to testing of the equipment. While it may be technically true that defects in the equipment grounding conductor can develop after the equipment has been tested, nearly all defects can be spotted as they develop through inspection and testing. In addition, there has been no showing that a greater incidence of accidents has been experienced when an assured equipment grounding conductor program has been implemented than with the use of GFCI's.

An analysis of the accident data leads OSHA to the conclusion that most of the 120-volt, ground-fault accidents which have occurred could have been prevented either by the use of GFCI's or by the implementation of an assured equipment grounding conductor program. For example, one construction site fatality occurred after the victim had mistakenly connected the "hot" conductor to a cord connector's equipment grounding conductor terminal in trying to repair an extension cord. Upon plugging the portable saw into the cord, he was electrocuted [Ex. 5]. If an assured equipment grounding conductor program had been implemented, the extension cord would have been tested after its "repair." In testing the cord, the defect would have been detected and the accident would have been prevented. Another construction worker was electrocuted when he picked up a new electric hand tool [Ex. 5]. All the cords were properly wired, but an altered plus on one of the extension cords he was using was inserted into a receptacle with the plug's grounding prong in contact with the "hot" conductor's terminal. Still another construction worker was electrocuted as he was helping a coworker install metal studs [Ex. 5]. The extension cord that the coworker was using had portions where bare conductors were exposed by insulation damage. When the coworker pulled on the extension cord, one of the bare spots hit the metal stud on which the victim was leaning. A ground-fault current then flowed from the exposed conductor through the metal stud (which was in contact with it), through the worker (who was leaning on the stud), and back to ground through the properly grounded screw gun he was holding. If an assured equipment grounding conductor program had been implemented on the construction sites where these last two workers were killed, the daily inspections would have readily detected these defects (the altered plug in one case and the insulation damage in the other), before the accidents occurred.

Although enabling us to reach the conclusion that either method of protection, GFCI's or assured equipment grounding conductor programs, is highly effective, the accident data does not allow a determination of whether either method is more effective in protecting against ground-fault hazards. What the record does show is that the accident experience of companies, which have implemented assured equipment grounding conductor programs for a number of years, has been that very few accidents have actually occurred on their construction sites. Moreover, since proper equipment grounding could prevent nearly all of the 30 to 45 ground-fault electrocutions occurring annually, and since assured equipment grounding conductor programs have been shown to actually result in the proper maintenance of the equipment grounding conductor, OSHA concludes that these electrocutions can be prevented by the use of an assured equipment grounding conductor program.

7. *What are the appropriate elements of an assured equipment grounding conductor program?* The recommended type of assured equipment grounding conductor programs necessary to provide safety to the employee did not vary substantively among the majority of the witnesses. They generally agreed that the equipment grounding conductor had to be tested [Ex. 1, 12, 14, 15, 26, 34, 36, 37] and that the program did not have to be lengthy or complex [Ex. 15, 37; Tr. 432, 435]. Some witnesses recommended more tests than others. Among the tests recommended were:

1. A continuity test of the equipment grounding conductor;
2. A test for short circuits;
3. A test to determine the adequacy of the equipment grounding conductor, by passing a high current through it;
4. A resistance test of the equipment grounding conductor; and
5. A leakage test (for tools only).

Of these OSHA feels that to ensure the safe condition of the equipment grounding conductor for tools, extension cords, or power supplies only the continuity test is necessary. The presence of the equipment grounding conductor is the parameter which is essential in providing the intended safety of the assured equipment grounding conductor program. The remaining tests evaluate properties of the equipment other than the presence of the equipment grounding conductor. Additionally, a test ascertaining that the equipment grounding conductor is connected to its proper terminal should be conducted. These two tests would assure that the equipment grounding conductor is present.

Other factors these witnesses considered necessary in an assured equipment grounding conductor program included:

1. The procedure for the program should be in writing;
2. A person responsible for carrying out the program should be designated;
3. Tests should be performed on receptacles, cord sets, and equipment connected by cord and plug (which is required to be grounded);
4. The testing should be recorded;
5. The testing should be performed before first use, after repairs are made, after suspected damage has occurred, and at regular intervals (generally three months); and
6. Visual inspections for damage should be performed before each day's use of a tool or cord.

OSHA concludes that an assured equipment grounding conductor program, in order to be effective, must include all of these elements. Those employers who have successfully used a program of this nature have incorporated most or all of these elements into their programs. Testing of receptacles, cord sets, and equipment connected by cord and plug is necessary since this equipment, on construction sites, is subject to abuse and the equipment grounding conductor may become inoperative. Since the equipment grounding conductor could be inoperative in a new tool, an improperly repaired tool, or a damaged tool, testing is essential before first use, after repair, and after damage is suspected. Since ordinary usage of a tool may affect the integrity of the equipment grounding conductor, OSHA believes that periodic testing is necessary. Several witnesses recommended that this testing take place every three months, and every six months for cord sets and receptacles which are essentially fixed [Ex. 12; Tr. 14, 432]. This evidence was uncontroverted. The visual inspection, which will usually be conducted by the user of the tool, is designed to detect the obvious type of damage such as missing pins, frayed wires, or damaged insulation. This daily inspection will not only detect obvious defects, thus preventing accidents, but will also hopefully raise the awareness of the employees toward the hazards associated with their electrical tools. The written procedure, designation of responsibility, and recording of the tests are necessary administrative requirements which ensure the effective implementation of the assured equipment grounding conductor program.

Some commenters also indicated that training of employees is an important aspect of alerting employees to the hazards associated with the use of electricity. We agree that training in the hazards of electricity and the safe use of electrical connectors and tools is necessary for the protection of employees. We have not, however, included a specific requirement for a training program as part of the assured equipment grounding conductor program since the general training requirements in § 1926.21(b)(2), which requires employers to instruct employees in the recognition and avoidance of unsafe conditions, were considered to be applicable to the subject of electrical hazards and adequate to impose an obligation for the requisite training.

8. *Whether it is feasible to implement an assured equipment grounding conductor program on construction sites.* Some witnesses asserted that an assured equipment grounding conductor program was impractical and unworkable on construction sites [Tr. 277–278, 391; PH 5]. One witness based his assertion on his company's experience with a similar program implemented on a large industrial construction site [Tr. 277–278]. Due to the size of the site, the large number of employees, and the variety of color bands simultaneously displayed on different tools (color bands being one method of recording tests), this witness seriously questioned whether this program, which was required by Federal contract, was actually in compliance with the contract.

In contrast, considerable evidence has been submitted of successful application of assured equipment grounding conductor programs. Representing a large company, one witness indicated successful use of a system of assured equipment grounding since 1935 [Ex. 12]. This company has found a three-month test interval and a system of colored banding (as a test record) to be satisfactory. A large chemical company uses a program that includes "checking tools on leaving and coming back to the tool bins" [Tr. 260]. Still another large chemical company, in its construction activities, devotes its resources to installing and maintaining effective equipment grounding conductors [Ex. 37]. Additionally, representatives from two large industrial associations state that many of their member companies also have programs to assure proper equipment grounding [Ex. 26, 36]. In light of the overwhelming evidence of actual experience, OSHA concludes that it is feasible to implement such a program on construction sites.

9. *What is the estimated cost of implementing an assured equipment grounding conductor program?* One witness, whose company's construction volume was $1 billion, estimated the cost of an assured equipment grounding conductor program to his company to be $120,000 [Ex. 12; PH 2]. In the 1975 Statistical Abstract of the United States, the value of all U.S. construction was $135 billion for 1974. Extrapolating this witness' estimate to the entire construction industry, the cost to perform the tests for tools and cords would be $16.2 million. In addition, the cost of the equipment to perform the tests varies between 19.8 and 27.6 million dollars. This range is based on the use of either a specialized tester or the use of standard testers. Based on the estimate that one specialized tester, costing approximately $500, would be used for every 100 tools and that there is one tool for each of the 4,000,000 construction employees, the total initial procurement cost for this tester would be approximately $19.8 million. However, use of standard testers (with a cost of $10 for a receptacle tester and $20 for an ohmmeter) by each of the 920,000 contractors in the U.S. would result in an initial cost of about $27.6 million. Therefore, the total first year cost (of testing and test equipment) could range from 36.0 to 43.8 million dollars.

IV. Conclusions

OSHA is faced with three alternatives in making its decision on ground-fault protection for personnel on construction sites—revoking the requirements for GFCI's entirely, requiring GFCI's or requiring either GFCI's or an assured equipment grounding conductor program. The evidence submitted on the subject of ground-fault circuit interrupters is sufficient to provide a basis for this determination to be made. The record has clearly demonstrated that 120-volt, ground-fault accidents are occurring on construction sites in sufficient quantity to deserve attention. OSHA feels that the 30 to 45 deaths per year, and the numerous secondary accidents, that are attributible to ground-faults strongly indicate a definite need for regulatory action to provide employee protection. Clearly, the record demonstrates that the use of GFCI's can feasibly and effectively supplement the present equipment grounding conductor requirements in preventing these accidents. Furthermore, the evidence shows that GFCI's can be used successfully on construction sites, if certain practices and procedures are utilized. These include not exposing cord connectors or tools to water and providing a sufficient number of GFCI's.

The evidence also indicates that proper equipment grounding can prevent such accidents. However, unless they are properly maintained and regularly checked, equipment grounding conductors may become discontinuous or ineffective, without this condition becoming readily apparent to the employee using the equipment. Based on the record, we have concluded that the proper maintenance and checking can be provided by an assured equipment grounding conductor program, and that such a program can be an effective and feasible method of preventing electrical accidents from cord- and plug-connected equipment. These programs include regularly testing the equipment grounding conductors of receptacles, cord sets, and equipment.

Our decision to permit employers to select either GFCI's or the assured equipment grounding conductor program as the means of providing the necessary protection for employees is based on our conclusion from the evidence that both means provide approximately the same margins of safety. Both methods work, in the sense that they are technically sound ways of preventing ground-fault accidents and could have prevented nearly all of the electrocutions discussed in the record. Both procedures, however, also have their technical or practical deficiencies. For example, GFCI's do not prevent electric shock and, while they will trip before the employee is electrocuted, the employee experiencing the shock may still suffer a serious, even fatal, secondary injury as a result of the recoil from the shock. GFCI's are also subject to failure and to being by-passed. The assured equipment grounding conductor program also has deficiencies. For example, it requires careful attention of the person(s) responsible for its implementation, and it cannot totally eliminate the possibility that the equipment grounding conductor may suddenly fail or be bypassed. Additionally, in a small number of cases, the equipment grounding conductor may not provide adequate safety. The evidence in the record is not sufficiently detailed, nor do we think evidence could presently be obtained, to permit a precise calculation of the greater effectiveness of one method over the other; however, based on the evidence and the foregoing discussion, we conclude that the difference in effectiveness, if it exists at all, is very small. Furthermore, while the proposal and notice of hearing did not specifically raise the possibility of requiring the use of both GFCI's and an assured equipment grounding conductor program, this option is viewed as providing a speculative and, at most, marginal improvement in safety while imposing a substantially greater burden on employers.

It is clear that the overriding purpose of the Act is to protect employee safety and health even if such protection results in the expenditure of large sums of money, increased production costs or reduced profit margins. On the other hand, the Act is not intended to impose unnecessary financial or other burdens upon affected employers. In light of the total value of construction (which exceeds $135,000,000,000 per year), however, the standard will not have a major economic or inflationary impact. Furthermore, in view of the number of 120-volt, ground-fault electrocutions occurring on construction sites (which is estimated to be between 30 and 45 per year) and other injuries incurred, the cost of compliance is justified.

As noted, OSHA has determined that the use of assured equipment grounding conductor programs on construction sites can be as effective in preventing 120-volt, ground-fault accidents as the use of GFCI's. Since an equivalent margin of safety can be afforded by the use of either method of protection, OSHA believes that it is appropriate to permit the employer to select either GFCI's or an assured equipment grounding conductor program on construction sites. In our view, permitting the employer this alternative, where safety is not being sacrificed, better effectuates the purposes of the Act within the meaning of section 6(b)(8) than would a requirement that all employers install GFCI's as required by the 1971 NEC. Several reasons lead to this conclusion. OSHA believes that, to the extent possible, its regulations should not inhibit technological development by mandating the implementation of specific devices or means of achieving safety where other means are available which are equally effective. Providing employers with a choice also encourages employer compliance with the standard and thereby eases enforcement as well. Many employers who already have an assured equipment grounding conductor program in effect or who already use GFCI's will

be able to comply with this standard with only minor adjustments in their methods of operation. This will give appropriate consideration to those who have taken steps to protect their employees and will encourage such action by other employers in the future. Even as to employers who do not now have an assured equipment grounding conductor program or do not use GFCI's, providing a choice of methods of protection will encourage compliance by easing the burden on employers without sacrificing safety. Thus, an employer may choose one method of protection or the other on the basis of several factors. The individual employer may choose on the basis of cost; if his local jurisdiction already requires GFCI's, he may choose GFCI's; if he is one employer of many on a construction site, the availability of alternatives gives him a flexibility to coordinate compliance. Another factor considered by an employer could be the size of his operation—a smaller employer may opt for the purchase of one or more portable GFCI's while a larger employer might pick the assured equipment grounding conductor program. OSHA believes that offering such a choice will encourage compliance by employers and therefore result in greater safety.

Finally, there is evidence which indicates that the code making authorities responsible for the revision of the NEC are currently considering amending the pertinent consensus standard to permit the same alternative means of protection as the ones being permitted in the standard promulgated herein.

Based on the record as a whole, OSHA has determined that a ground-fault protection standard is necessary and appropriate for the safety and health of employees. Therefore, OSHA is promulgating a rule requiring employers to provide either: (a) Ground-fault circuit interrupters on construction sites, or (b) a scheduled and recorded, assured equipment grounding conductor program covering receptacles, cord sets, and cord- and plug-connected equipment used on construction sites.

V. Discussion of the Final Standard

Following is a discussion of the major aspects of the final standard. Employers are required by the final standard to provide at least one of two ground-fault protection methods on construction sites, in addition to complying with the applicable equipment grounding conductor requirement contained in the OSHA regulations. Each method is discussed separately as follows:

1. *Ground-fault Circuit Interrupters (§ 1910.309(c)(2); § 1926.400(h)(2).* If the employer selects this option, the employer must provide ground-fault circuit interrupter protection for all 120-volt, 15- and 20-ampere, single-phase receptacles on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees. As noted, this protection is required in addition to, not in lieu of, the equipment grounding conductor requirements of Parts 1910 and 1926.

The GFCI's used must be "approved," as that term is defined in §§ 1910.308(d) and 1926.405(a). Various types of approved GFCI's suitable for use on construction sites are available, including circuit-breaker, receptacle, and portable types. Most of today's approved GFCI's have trip levels of 5mA ± 1mA. Portable GFCI's are acceptable, if they are connected to the receptacle outlet in use.

On generators whose supply wires are not required to be grounded, and are in fact not grounded, the return path for a ground-fault current to flow is not completed and the hazard which a GFCI would protect against is not present. Consequently, the rule as promulgated in § 1910.309(c)(2) and § 1926.400(h)(2) does not require the use of GFCI's on portable or vehicle-mounted generators of 5kW capacity or less if its output is a two-wire, single-phase system and its circuit conductors are insulated from the generator frame and all other grounded surfaces. This section is similar to the provisions of the 1975 NEC, section 210–8(b). It should be noted that receptacles on all small portable generators are not exempt from the GFCI requirement. The standard clearly states that receptacles on such generators, to be exempt, must have the circuit conductors insulated from the generator frames and all grounded surfaces. The requirements of section 445–8 of the 1971 NEC (adopted by reference in § 1910.309 and § 1926.400(a)) also, of course, apply to such generators.

2. *Assured Equipment Grounding Conductor Program (§ 1910.309(c)(3) and § 1926.400(h)(3)).* If the employer selects this option, the employer must provide an assured equipment grounding conductor program covering all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and equipment connected by cord and plug which are available for use by employees. The requirements which the program must meet are set forth in §§ 1910.309(c)(3) and 1926.400(h)(3), but employers may provide additional tests or procedures. Though it is not required to be posted, a written procedure for the program shall be kept at the jobsite and made available to OSHA and any affected employee.

The employer must designate one or more competent persons to implement the program. A competent person is defined in § 1926.32(f) as one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. This person may be the employer, an employee of the employer, or another person.

Inspections. Equipment, except cord sets and receptacles which are fixed and not exposed to damage, must be inspected, before each day's use, for visible damage or defects. Any equipment found on inspection to be damaged or defective may not be made available for use or used by employees.

Periodic Tests. Two tests are required to be performed to assure the safe condition of the equipment grounding conductor. The first test is a continuity test—the equipment grounding conductor must be electrically continuous. This test is required to be performed on all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and cord- and plug-connected equipment which are required to be grounded. It may be performed by an ohmmeter for cord sets and cord- and plug-connected equipment, and by a receptacle tester for receptacles or by any other testing device which can ascertain electrical continuity.

In addition to the continuity test, a test must be performed on receptacles and attachment caps and plugs to ascertain that the equipment grounding conductor is connected to its proper terminal. This test can be performed by the same equipment used to perform the first test.

Both of these tests are required to be performed: (1) Before first use; (2) after any repairs; (3) after damage can be reasonably suspected to have occurred; and (4) at 3 month intervals. For cord sets and receptacles which are fixed and not exposed to damage which rough handling or abuse is most likely to cause, the testing frequency may be reduced to once every six months. The basis for the different testing interval is that this type of equipment, once it is in place, is not subject to the same abuse, and the hazards thereby created, as equipment that is constantly moved around on construction sites. Therefore, cord sets which we would consider fixed would only be those which, once they are put in place, remain stationary and not those cord sets which are being constantly moved around on construction sites.

Recording of testing. The standard requires that the testing be recorded. To record the tests, color coding, logs, or other effective means may be used. The record must indicate which equipment passed the test and the date it was tested or the interval for which it was tested. Any equipment which fails to pass the required tests may not be made available for use by employees until the defect has been repaired and the equipment successfully retested.

3. *Effective Date.* In order to allow a period for employers and employees to be informed of the existence and requirements of this standard, the effective date of the standard is February 22, 1977.

VI. The Final Standard

Accordingly, upon consideration of the whole record of this proceeding, and pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96; 40 U.S.C. 333), Secretary of Labor's Order No. 8–76 (41 FR 25059), and 29 CFR Part 1911, Parts 1910 and

1926 of Title 29, Code of Federal Regulations, are hereby amended as follows:

1. In 29 CFR Part 1910, paragraph (c) of § 1910.309 is revised to read as follows:

§ 1910.309 National Electrical Code.

* * * * *

(c) *Ground-fault protection*—(1) *General.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, the requirement in section 210–7 of the 1971 National Electrical Code (NFPA 70–1971; ANSI C1–1971) that all 15- and 20-ampere receptacle outlets on single-phase circuits for construction sites have approved ground-fault circuit protection for personnel does not apply. In lieu thereof, the employer shall use either ground-fault circuit interrupters as specified in paragraph (c)(2) of this section or an assured equipment grounding conductor program as specified in paragraph (c)(3) of this section, to protect employees on construction sites. These requirements are in addition to any other requirements for equipment grounding conductors.

(2) *Ground-fault circuit interrupters.* All 120-volt, single-phase, 15- and 20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees, shall have approved ground-fault circuit interrupters for personnel protection. Receptacles on a two-wire, single-phase portable or vehicle-mounted generator rated not more than 5kW, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, need not be protected with ground-fault circuit interrupters.

(3) *Assured equipment grounding conductor program.* The employer shall establish and implement an assured equipment grounding conductor program on construction sites covering all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and equipment connected by cord and plug, which are available for use or used by employees. This program shall comply with the following minimum requirements:

(i) A written description of the program, including the specific procedures adopted by the employer, shall be available at the jobsite for inspection and copying by the Assistant Secretary and any affected employee.

(ii) The employer shall designate one or more competent persons (as defined in 29 CFR 1926.32(f)) to implement the program.

(iii) Each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, shall be visually inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indication of possible internal damage. Equipment found damaged or defective may not be used until repaired.

(iv) The following tests shall be performed on all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and cord- and plug-connected equipment required to be grounded:

(A) All equipment grounding conductors shall be tested for continuity and shall be electrically continuous.

(B) Each receptacle and attachment cap or plug shall be tested for correct attachment of the equipment grounding conductor. The equipment grounding conductor shall be connected to its proper terminal.

(v) All required tests shall be performed:

(A) Before first use;

(B) Before equipment is returned to service following any repairs;

(C) Before equipment is used after any incident which can be reasonably suspected to have caused damage (for example, when a cord set is run over); and

(D) At intervals not to exceed 3 months, except that cord sets and receptacles which are fixed and not exposed to damage shall be tested at intervals not exceeding 6 months.

(vi) The employer may not make available or permit the use by employees of any equipment which has not met the requirements of this paragraph (c)(3) of this section.

(vii) Tests performed as required in this paragraph shall be recorded. This test record shall identify each receptacle, cord set, and cord- and plug-connected equipment that passed the test, and shall indicate the last date it was tested or the interval for which it was tested. This record shall be kept by means of logs, color coding, or other effective means, and shall be maintained until replaced by a more current record. The record shall be made available on the jobsite for inspection by the Assistant Secretary and any affected employee.

2. In 29 CFR Part 1926, paragraph (h) of § 1926.400 is revised to read as follows:

§ 1926.400 General requirements.

* * * * *

(h) *Ground-fault protection.*—(1) *General.* Notwithstanding any other provision of this part, the requirement in section 210–7 of the 1971 National Electrical Code (NFPA 70–1971; ANSI C1–1971) that all 15- and 20-ampere receptacle outlets on single-phase circuits for construction sites have approved ground-fault circuit protection for personnel does not apply. In lieu thereof, the employer shall use either ground-fault circuit interrupters as specified in paragraph (h)(2) of this section or an assured equipment grounding conductor program as specified in paragraph (h)(3) of this section, to protect employees on construction sites. These requirements are in addition to any other requirements for equipment grounding conductors.

(2) *Ground-fault circuit interrupters.* All 120-volt, single-phase, 15- and 20-ampere receptacle outlets on construction sites, which are not a part of the permanent wiring of the building or structure and which are in use by employees, shall have approved ground-fault circuit interrupters for personnel protection. Receptacles on a two-wire, single-phase portable or vehicle-mounted generator rated not more than 5kW, where the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces, need not be protected with ground-fault circuit interrupters.

(3) *Assured equipment grounding conductor program.* The employer shall establish and implement an assured equipment grounding conductor program on construction sites covering all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and equipment connected by cord and plug which are available for use or used by employees. This program shall comply with the following minimum requirements:

(i) A written description of the program, including the specific procedures adopted by the employer, shall be available at the jobsite for inspection and copying by the Assistant Secretary and any affected employee.

(ii) The employer shall designate one or more competent persons (as defined in § 1926.32(f)) to implement the program.

(iii) Each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, shall be visually inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indication of possible internal damage. Equipment found damaged or defective may not be used until repaired.

(iv) The following tests shall be performed on all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and cord- and plug-connected equipment required to be grounded:

(A) All equipment grounding conductors shall be tested for continuity and shall be electrically continuous.

(B) Each receptacle and attachment cap or plug shall be tested for correct attachment of the equipment grounding conductor. The equipment grounding conductor shall be connected to its proper terminal.

(v) All required tests shall be performed:

(A) Before first use;

(B) Before equipment is returned to service following any repairs;

(C) Before equipment is used after any incident which can be reasonably suspected to have caused damage (for example, when a cord set is run over); and

(D) At intervals not to exceed 3 months, except that cord sets and receptacles which are fixed and not exposed to damage shall be tested at intervals not exceeding 6 months.

(vi) The employer may not make available or permit the use by employees of any equipment which has not met the requirements of this paragraph (h)(3) of this section.

(vii) Tests performed as required in this paragraph shall be recorded. This test record shall identify each receptacle, cord set, and cord- and plug-connected equipment that passed the test, and shall indicate the last date it was tested or the interval for which it was tested. This record shall be kept by means of logs, color coding, or other effective means, and shall be maintained until replaced by a more current record. The record shall be made available on the jobsite for inspection by the Assistant Secretary and any affected employee.

Effective date: These amendments of Parts 1910 and 1926 become effective on February 22, 1977.

(Secs. 6(b) and 8(c), Pub. L. 91-596, 84 Stat. 1593, 1599 (29 U.S.C. 655, 657); sec. 107, Pub. L. 91-54, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 8-76 (41 FR 25059); 29 CFR Part 1911).

Signed at Washington, D.C., this 15th day of December, 1976.

MORTON CORN,
Assistant Secretary of Labor.

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