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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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Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

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Title 3—The President

PROCLAMATION 4481

National Poison Prevention Week, 1977

By the President of the United States of America

A Proclamation

As parents and teachers, we encourage our children to be curious and inquisitive. But a child's curiosity can sometimes bring tragedy. Most American homes contain potential poisons—polishes, cleansers, medicines, solvents, and pesticides. When children can find these substances, they naturally experiment with them.

Over the past sixteen years, the number of children under the age of five who have died from accidental poisoning has declined by 68 per cent. New and safer packages for dangerous products are a major reason for this decline. But our children's inclination to explore the unknown may still lead them into dangers that no safety measures can control.

To encourage the American people to remember the dangers of accidental poisoning and to take appropriate preventive measures, the Congress, by joint resolution of September 26, 1961 (36 U.S.C. 165), has requested the President to issue annually a proclamation designating the third week in March as National Poison Prevention Week.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week beginning March 20, 1977, as National Poison Prevention Week. I urge all Americans and all agencies and organizations concerned with the prevention of accidental poisonings and the welfare of our Nation's youngsters to join in activities designed to encourage the safe storage, use and handling of poisonous household substances.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of February, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.

[FR Doc.77-4839 Filed 2-11-77 ;1:36 pm]
Establishing the Committee on Selection of the Director of the Federal Bureau of Investigation

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

SECTION 1. Establishment of the Committee. There is hereby established the Committee on Selection of the Director of the Federal Bureau of Investigation, hereinafter referred to as the Committee. The Committee shall consist of a Chairman and eight other members to be appointed by the President.

Sec. 2. Functions. The Committee shall conduct inquiries to identify persons who may be qualified to serve as the Director of the Federal Bureau of Investigation, hereinafter referred to as the Director, and shall conduct investigations of those persons to determine their qualifications.

Sec. 3. Report; Duration.

(a) The Committee shall submit to the President and to the Attorney General, within ninety days from the date of this Order, a report listing the names of the five persons whom the Committee considers best qualified to serve as the Director and setting forth such other information as the President or the Attorney General may require.

(b) The Committee shall terminate thirty days after submission of its report, unless its duration is extended by the President. So long as the Committee remains in existence, it shall conduct such additional inquiries and submit such additional reports as may be requested by the President or the Attorney General.

Sec. 4. Ineligibility of Committee Members. No member of the Committee shall be eligible to be considered as a possible nominee for the position of Director.

Sec. 5. Cooperation by Executive Agencies. The Committee is authorized to request, through its Chairman, from any Executive department or agency such information or assistance as the Committee deems necessary to carry out its functions under this Order. Each department or agency shall, to the extent permitted by law, furnish such information or assistance to the Committee. The Committee also is authorized to request from any State agency such information and assistance as the Committee deems necessary, and to obtain such information and assistance to the extent permitted by State law.
THE PRESIDENT

Sec. 6. Travel Expenses; Administrative Support; Financing.

(a) Members of the Committee shall serve without compensation. While engaged in the work of the Committee, members may receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

(b) The Attorney General shall furnish to the Committee necessary staff, supplies, facilities and other administrative services.

(c) All necessary expenses incurred in connection with the work of the Committee, to the extent permitted by law, shall be paid from funds available to the Attorney General.

Sec. 7. Federal Advisory Committee Act Functions. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Attorney General in accordance with guidelines and procedures established by the Office of Management and Budget.

The White House,

[FR Doc. 77-4840 Filed 2-11-77; 1:36 pm]
rules and regulations

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

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

Title 7—Agriculture

CHAPTER 1—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING ADMINISTRATION OFFICES), DEPARTMENT OF AGRICULTURE

PART 180—PLANT VARIETY PROTECTION ACT REGULATIONS AND RULES OF PRACTICE

Miscellaneous Amendments

Statement of considerations. Title 7 of the Code of Federal Regulations, Part 180 (7 CFR 180), is reissued to conform to the Plant Variety Protection Act (7 USC 2321, et seq.). Section 180.2(c) of the regulations and rules of practice (7 CFR 180.2(c)) provides that the proceedings of the Plant Variety Protection Board shall be conducted in accordance with an Executive Order that is superseded. Administrative Regulations that are not specified, and an Instruction which has been superseded.

Section 180.7(a) of the regulations and rules of practice under the Plant Variety Protection Act (7 CFR 180.7(c)) provides that the one-year period allowed applicants to complete grow-out tests to grant protection on perennial forage varieties. The Protection Act (7 CFR 180.5(c)) provides that if an applicant fails to advance actively his application to its completion, the application fee in such event will be considered abandoned. An application abandoned for failure on the part of the applicant to advance actively his application may be revived under certain circumstances, but no time limit for reviving such an application is specified. An application voluntarily abandoned, if revived, must be revived within 3 months under the provisions of §180.23(b). These sections are inconsistent in that under §180.22 an applicant who fails to act on his application has no time limit imposed for reviving his application after abandonment; whereas, under §180.23(b) an applicant who voluntarily abandons his application must revive it within a time limit of 3 months.

Sections 180.11, 180.20, 180.100, 180.101, 180.103, 180.175, and 180.178 of the regulations and rules of practice of the Plant Variety Protection Act (7 CFR 180.11, 180.20, 180.100, 180.101, 180.103, 180.175, and 180.176) refer to the collection of the filing fee and the search fee and (2) search or examination, and refunds thereof. The separate collection of the filing fee and the search fee delays the search or examination. Section 180.11(b) of the regulations and rules of practice (7 CFR 180.11(b)) provides that the applicant shall submit a reasonable quantity of the viable basic seed required as determined by the Commissioner. It has been the practice to request such samples at the time a notice of allowance is mailed. This has resulted in delays in the issuance of certificates and does not permit examination of the seed sample before a notice of allowance is issued.

Pursuant to the administrative procedures provisions of §180.6, there was published in the FEDERAL REGISTER (76-36591) on December 19, 1976, a notice of proposed rulemaking with respect to proposed amendments of the regulations and rules of practice (7 CFR 180) mentioned in the statement of considerations.

Interested persons were given an opportunity to submit written comments regarding the proposal.

Over 1,500 copies of the proposal were distributed to interested trade and Government persons, groups and organizations, and a press release was sent to leading trade magazines.

Written comments were received from one trade organization and a member of the Plant Variety Protection Board. All favored adoption of the proposals.

It is concluded that the amendments proposed on December 14, 1976, are in the public interest and accordingly these sections are hereby amended as follows:

1. Section 180.2(c) is revised as follows:

§180.2 Plant Variety Protection Board.

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act (5 U.S.C. 552a). OMB Circular A-23, and Administrative Regulations of the U.S. Department of Agriculture (7 CFR Part 23) and such additional operating procedures as are adopted by members of the Board.

2. New §180.6(c) and (d) are added as follows:

§180.6 Application for certificate.

(c) The fees for (1) filing application, and (2) search or examination, shall be submitted with the application in accordance with sections 180.175, 180.178.

(d) The applicant shall submit with the application at least 2,500 seeds of the viable basic seed required to reproduce the variety.

3. The proviso in §180.7(a) is amended as follows:

§180.7 Statement of applicant.

(a) * * * Provided, however, That the total period allowed does not exceed 5 years.

4. Section 180.11(b) is revised as follows:

§180.11 Application accepted and filed when received.

(b) If any part of an application is so incomplete or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the application will be notified. The application will be held a maximum of 6 months for completion. Applications not completed at the end of the prescribed period will be considered abandoned. The application fee in such cases will not be refunded.

5. Section 180.20(e) is amended by adding to the paragraph a sentence:

§180.20 Abandonment for failure to respond within time limit.

(a) * * * The application fee in such cases will not be refunded.

6. The first sentence of §180.22 is revised to read as follows:

§180.22 Revival of application abandoned for failure to reply.

An application abandoned for failure on the part of the applicant to advance actively his application to its completion, in accordance with the regulations in this part, may be revived as a pending application within 3 months of such abandonment upon a finding by the Commissioner that the failure was inadvertent, unavoidable, and without fraudulent intent.

§180.100 [Amended]

7. In §180.100, paragraph (a) is deleted.

§180.101 [Amended]

8. In §180.101, paragraph (b) is deleted.
smallest possible date. Accordingly, it is deter-
m mente that compliance with the notice
and participation procedures as practicable
in a U.S.C. 553 is impracticable and contrary
and the public interest. This document is

being made effective without compliance
with such procedure. 7 CFR Part 724 is

amended by inserting after the first sentence “except
for the examination or search fee, which
shall be refund if an application is
voluntarily abandoned pursuant to
§180.23(a) before a search or examina-
tion has begun.”

These amendments shall become effec-
tive on March 17,1977.


William T. Manley,
Deputy Administrator,
Program Operations.

[FR Doc.77-4672 Filed 2-14-77;8:45 am]

CHAPTER VII—AGRICULTURAL STABIL-
IZATION AND CONSERVATION SERVICE
(AGRICULTURAL ADJUSTMENT, DE-
PARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS
AND ACREAGE ALLOTMENTS

[Amend. 5]

PART 724—FIRE-CURED, DARK AIR-
CUR ED, VIRGINIA SUN-CURED, CIGAR-
BINDER (TYPES 51 AND 52), CIGAR-
Filler and Binder (Types 42, 43, 44, 45, 53, 54, AND 55) TOBACCO

Tobacco Allotment and Marketing Quota
Regulations, 1972-73 and Subsequent
Marketing Years

This amendment provides the penalty
rates applicable to excess tobacco mar-
keted in the 1976-77 marketing year and
eliminates the restrictions formerly
placed on releasing and transferring al-
lotments on federally-owned land. Other
minor revisions and deletions are made
which do not materially affect the 1976-
77 rate of penalty per pound. These
amendments are effective on March 17,
1977.

The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the “percent excess,” shall be determined in

180.23(a) before a search or examina-
tion has begun.

The average market price for the
farm acreage allotment for farms affected by
natural disaster.

For the fiscal years of 1976-77 and
subsequent years, the rate of penalty shall be


determined in accordance with the provisions of Part 793 of this chapter.

A percentage reduction for violation.

The percentage of excess tobacco marketed shall be determined in dollars and

The rate of penalty shall be determined in

A percentage reduction for violation.

The percentage of excess tobacco marketed shall be determined in dollars and
cents.

The rate of penalty for the fiscal years of
1976-77 and subsequent years shall be

1976-77 rate of penalty per pound.

The penalty rate per pound for the kinds
of tobacco listed below as determined by the Crop Reporting Board, U.S.
Department of Agriculture for the 1975-76 marketing year was:

Average market price

<table>
<thead>
<tr>
<th>Kind of tobacco</th>
<th>Cents per pound</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire-cured</td>
<td>72.0</td>
</tr>
<tr>
<td>Dark air-cured</td>
<td>70.0</td>
</tr>
<tr>
<td>Virginia sun-cured</td>
<td>67.0</td>
</tr>
<tr>
<td>Cigar-filler and binder (types 42, 43, 44, 45, 53, 54, and 55)</td>
<td>64.0</td>
</tr>
<tr>
<td>Cigar-binder (types 51 and 52)</td>
<td>92.7</td>
</tr>
</tbody>
</table>

(1) All or part of the farm allotment
for the transferring farm could not be
changed or replanted because of the
natural disaster.
(2) One or more of the producers of
the transferring farm will be a bona fide producer engaged in the produc-
tion of tobacco on the receiving farm
and will share in the proceeds of the
tobacco.

Since farmers are now marketing their

tobacco, it is essential that these regu-
lations be made effective at the earliest
possible date. Accordingly, it is deter-
m arted that compliance with the notice

This amendment provides the penalty
rates applicable to excess tobacco mar-
keted in the 1976-77 marketing year and
eliminates the restrictions formerly
placed on releasing and transferring al-
lotments on federally-owned land. Other
minor revisions and deletions are made
which do not materially affect the 1976-
77 rate of penalty per pound. These
amendments are effective on March 17,
1977.

The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the “percent excess,” shall be determined in

180.23(a) before a search or examina-
tion has begun.

The average market price for the
farm acreage allotment for farms affected by
natural disaster.

For the fiscal years of 1976-77 and
subsequent years, the rate of penalty shall be
determined in accordance with the provisions of Part 793 of this chapter.

A percentage reduction for violation.

The percentage of excess tobacco marketed shall be determined in dollars and
cents.

The rate of penalty for the fiscal years of
1976-77 and subsequent years shall be
determined in accordance with the provisions of Part 793 of this chapter.

A percentage reduction for violation.

The percentage of excess tobacco marketed shall be determined in dollars and
cents.

The rate of penalty for the fiscal years of
1976-77 and subsequent years shall be
determined in accordance with the provisions of Part 793 of this chapter.

A percentage reduction for violation.

The percentage of excess tobacco marketed shall be determined in dollars and
cents.

The rate of penalty for the fiscal years of
1976-77 and subsequent years shall be
determined in accordance with the provisions of Part 793 of this chapter.

A percentage reduction for violation.

The percentage of excess tobacco marketed shall be determined in dollars and
cents.

The rate of penalty for the fiscal years of
1976-77 and subsequent years shall be
determined in accordance with the provisions of Part 793 of this chapter.
CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 707—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period February 4-10, 1977. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 967.

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 967, it is hereby found that the limitation of handling of Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the Act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 399 (42 FR 6579). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulations became effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the

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It is estimated that the amounts in excess of adjusted trade demands for these four varieties will be utilized in products and/or export markets.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee, and other available information, it is found that to establish free percentages, restricted percentages, and withholding factors as hereinafter set forth will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the time interval exists for not postponing the effective time of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) in that: (1) This action does not impose any restrictions upon handlers and gives them flexibility in meeting market needs; (2) the relevant provisions of said marketing agreement and this part require that free and restricted percentages and withholding factors established for a particular crop year shall be applicable during the entire crop year to all marketable dates; and (3) the current crop year began October 1, 1976, and the percentages and withholding factors hereinafter established will apply to all such dates beginning with that date.

The various free percentages, restricted percentages, and withholding factors for the 1976-77 crop year are as follows: § 907.224 Free and restricted percentages and withholding factors.

The various free percentages, restricted percentages, and withholding factors applicable to marketable dates of each variety shall be, for the crop year beginning October 1, 1976, and ending September 30, 1977, as follows:

(a) Deglet Noor variety dates; Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.
(b) Zahidi variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.
(c) Halawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.

(d) Khadrawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.
and unnecessary. Accordingly, good cause exists to dispense with the notice and public procedure on this amendment and further to make this amendment effective immediately.

Accordingly, § 1014.12(a) (1) of Title 16, Chapter II, Subchapter A is revised to read as follows:

§ 1014.12 Specific exemptions.

(a) Injury information. (1) The Bureau of Epidemiology maintains a file of Accident Reports (On-Depth Investigations) which are conducted on a sample of product related injuries reported to the Commission by rejected hospital emergency rooms, by consumers through the Commission’s “Hot-Line” telephone service and through written consumer complaints and by other means such as newspaper reports. The purpose of this record system is to compile accident statistics for analyzing the incidence and severity of product related injuries.


SADYE E. DUNN
Secretary, Consumer Product Safety Commission.

[FR Doc. 77-4691 Filed 2-14-77; 8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. EM75-57; Order 561]

UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES AND NATURAL GAS COMPANIES

Order Adopting Amendments

February 2, 1977.

In the matter of amendments to Uniform System of Accounts for public utilities and licensees and for natural gas companies (Classes A, B, C and D) to provide for the determination of rate for computing the allowance for funds used during construction and revisions of certain schedule pages of FPC reports; order adopting amendment to Uniform System of Accounts for public utilities and licensees and for natural gas companies.

On May 20, 1975, the Commission issued a notice of proposed rulemaking in Docket No. RM75-27 (40 FR 23322, May 29, 1975). This rulemaking proposed to establish a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) and to provide accounting and reporting requirements for AFUDC which accord with the elements entering into the determination of AFUDC rates. The stated objective of the proposed rule was to establish a method which would give recognition to the interrelationship between capital utilized for rate case purposes and the capital components of AFUDC in a manner that would permit a utility to achieve a rate of return on its total utility operations, including its construction program, at approximately the rate which would be allowed in a rate case.

Comments were invited from interested parties on or before July 7, 1975. Due to requests, this date was extended to September 10, 1975. In response to the proposed rulemaking, the Commission received comments from seventy-nine respondents (Attachment A). In general, the reaction to the proposed rulemaking was favorable, but many respondents questioned the ability of the proposal to meet such objectives and made suggestions for improvement.

Many respondents objected to the weight given short-term debt in the proposed rule and suggested a number of alternatives. These respondents argued that short-term debt is not the first source of construction funds, as it would be indicated by application of the proposed formula, and should be ignored or given less weight. We are not convinced, however, that modifying the proposed formula with respect to short-term debt is generally impossible to specifically trace the source of funds used for various corporate purposes and it was not the purpose of our proposed rule to do so. Instead, we proposed a rule that would give a utility an opportunity to be compensated for the total cost of capital devoted to utility operations. Including short-term debt in the proposed rule was done so that a method for determining AFUDC can be devised that will not result in double counting of the same capital cost or will not omit important categories of capital cost. Typically, short-term debt has been neglected or given less weight. We are not convinced that the cost rate to be used for common equity funds should be determined. Unlike debt costs or the cost of preferred stock, which can be objectively determined by analysis of actual company obligations or market conditions, the cost of common equity is not ordinarily related to contractual requirements. In the proposed rule we indicated that the rate cost to be used for common equity funds should be found from composites of common equity in the last rate proceeding before the body having primary rate jurisdiction or, if such rate is not available, the average rate actually earned during such period by the utility should be used. We recognize, based on the comments received, that this approach may require some modification in situations where making bodies use other than an “original cost” approach to limit utilities are subject to multiple rate jurisdictions. However, in developing a general rule relating to AFUDC, we find any possibility of the nature can best be handled on an individual company basis.

Noting that short-term debt represents a valid and necessary expenditure for conducting utility operations, we recognized that this may be a particularly uninviting aspect of the proposed rule for some utilities since “Other Income” will be reduced upon adoption of the proposal and its ability of the proposal to meet such objectives can be objectively determined by analysis of actual company obligations or market conditions and that the use of incremental cost for AFUDC purposes and embedded cost for capital costs in the ratio of rate base to the size of the capital structure used for rate of return purposes. If we assume for the sake of argument that the sum of the utility’s permanent capital structure plus short-term borrowing is equal to the sum of its rate base plus construction work in progress, it is obvious that the use of incremental cost for AFUDC purposes and embedded cost for rate of return purposes would result in double counting of the same costs. Although the above illustration somewhat oversimplifies the issue, we believe that the “original cost” approach is seriously flawed.

The other basic component for AFUDC relates to common equity funds. Comments by respondents on this subject primarily revolved around the reasonable cost rate of common equity funds should be determined. Unlike debt costs or the cost of preferred stock, which can be objectively determined by analysis of actual company obligations or market conditions, the cost of common equity is not ordinarily related to contractual requirements. In the proposed rule we indicated that the rate cost to be used for common equity funds should be found from composites of common equity in the last rate proceeding before the body having primary rate jurisdiction or, if such rate is not available, the average rate actually earned during such period by the utility should be used. We recognize, based on the comments received, that this approach may require some modification in situations where making bodies use other than an “original cost” approach to limit utilities are subject to multiple rate jurisdictions. However, in developing a general rule relating to AFUDC, we find any possibility of the nature can best be handled on an individual company basis.

Having considered the broad issues of the various components of the AFUDC, it is necessary to recognize the many constructive and helpful comments and suggestions received relating to other facets of the proposed rulemaking.

Many comments were received regarding the desirability of integrating AFUDC into two components, borrowed funds and other funds, and the relocation of the allowance for borrowed funds to the Interest Charges Section of the Income Statement. The main objection to this proposed requirement was that it would have the effect of reducing interest coverages and thereby restrict the issuance of additional capital by some companies. We recognized that this may be a particularly uninviting aspect of the proposed rule for some utilities since “Other Income” will be reduced upon adoption of the proposal and its ability of the proposal to meet such objectives can be objectively determined by analysis of actual company obligations or market conditions and that the use of incremental cost for AFUDC purposes and embedded cost for capital costs in the ratio of rate base to the size of the capital structure used for rate of return purposes. If we assume for the sake of argument that the sum of the utility’s permanent capital structure plus short-term borrowing is equal to the sum of its rate base plus construction work in progress, it is obvious that the use of incremental cost for AFUDC purposes and embedded cost for rate of return purposes would result in double counting of the same costs. Although the above illustration somewhat oversimplifies the issue, we believe that the “original cost” approach is seriously flawed.

3 We also recognize that interest coverages for some utilities may be increased if in their coverage computations they use net interest charges since this amount will be reduced upon application of the proposed rule.
ers of the financial statements of utilities as to the nature and level of the capitalized allowance for borrowed funds. Since there is little conceptual difference between capitalization of the cost of borrowed funds used for construction purposes and other costs of construction such as labor and materials, we believe that the readers of financial statements will be better informed if such construction interest is shown on the location of costs by a reduction in the Interest Charges Section of the income statement rather than as an income item.

A number of respondents criticized the proposal to determine the current year's AFUDC rates by the use of average actual book balances and cost rates of the prior year principally because short-term costs are very volatile and the use of averages for a previous year does not give a proper indication of the cost of short-term debt for prospective computations of AFUDC. We believe that valid AFUDC rates can be determined in the same manner as set forth in §35.13(b)(4) and believe that modifications of the proposed rule in this area are necessary.

We are modifying the proposed rule to provide that the balances of long-term debt, including contributions in aid of construction, for use in the formula for the current year will be the balances in such accounts at the end of the prior year; the cost rates for long-term debt and preferred income taxes accounts are used to reduce the average cost of such capital. The average short-term debt balances and related cost and the average construction work in progress are estimated balances for the current year. We shall require, however, that public utilities and natural gas companies monitor their actual experience and adjust to actual at year-end if a significant deviation from the rates used should occur. For this purpose we shall consider a significant deviation to exist if the gross AFUDC rate exceeds by more than one-quarter of a percentage point (25%) the rate that would be determined from the use of actual thirteen monthly balances of construction work in progress and the actual weighted average balances for short-term debt outstanding during the year.

Many respondents requested clarification as to whether premiums, discounts and expenses related to long-term debt, and compensating balances and commitment fees related to short-term debt, were to be considered when determining the cost rate for such funds. With respect to long-term debt, the cost of such capital should be the yield to maturity of capital which is the nominal short-term interest rate to reflect this additional cost. We believe that this approach is necessary because of the diversity of rate treatment for these items; the computation of required levels of compensating bank balances is tied to normal operating purposes and those used for compensating bank balances; and the frequent lack of formal agreements for required levels of compensating bank balances.

Some respondents commented that the value of non-investor sources of funds such as accumulated deferred income taxes, for purposes of computing AFUDC should be recognized in the formula. We are not adopting this suggestion since normally the entire balances in the accumulated deferred income taxes accounts are used to reduce rate base for cost of service purposes. To include such balances in determining the AFUDC rate would result in double counting of the same dollars. The same reason applies to contributions in aid of construction, since under our Uniform System of Accounts such contributions are credited directly to construction costs.

A number of respondents commented that previously capitalized AFUDC should be included in the cost base to which the AFUDC rate applies since AFUDC was capitalized for the purpose of construction. We believe that a monthly compounding of AFUDC as suggested by some respondents may result in excessive amounts capitalized since cash outlays for interest and dividends are not normally made on a monthly basis. We shall therefore permit compounding but no more frequently than semi-annually.

A number of respondents also indicated that any rules issued with respect to AFUDC should apply to Nuclear Fuel in Process of Refinement, Conversion, Enrichment and Fabrication (Account 120.1) in the same manner as Construction Work in Progress. We agree with these comments and will so provide.

Certain other constructive suggestions received from respondents have been included in the accounting instructions for the purpose of adding clarity to the accounting principles. We have also deleted that portion of the proposed plant instructions pertaining to computations of income taxes. We believe that these proposed instructions are not necessary in view of our Orders Nos. 530, 530-A and 530-B in Docket Nos. R-424, Accounting for Premiums, Discount and Expense of Issue, Gains and Losses from Refunding and Reorganization of Long-Term Debt, and Interperiod Allocation of Income Taxes and R-449, Amendments to the Uniform System of Accounts for Corporations A, B and C Public Utility Companies, and Issued on February 17, 1977.

The accounting for deferred income taxes prescribed in Order No. 530 was structured to accommodate utilities under the rate jurisdiction of the various state regulatory bodies that may or may not authorize deferred tax accounting for rate purposes (See General Instruction 18). If a net of tax allowance for a rate base is prescribed in Order No. 530 and it is necessary for utilities to set aside deferred income taxes related to the interest component of the allowance for funds used rate. In light of this, we do not believe is necessary to make provision in the Uniform System of Accounts to cover this matter.

The Commission finds: (1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner described above, are necessary and appropriate for the procedural requirements prescribed by 5 U.S.C. §553.

(2) The amendments to Parts 101 and 104 of the Commission's Uniform System of Accounts for Public Utilities and Licensees and to FPC Forms No. 1, No. 1-P, and No. 5, required by §§141.1, 141.2, and 141.23 in Chapter I, Title 18 of the Code of Federal Regulations, herein prescribed, are necessary and appropriate for the administration of the Federal Power Act.

(3) The amendments to Parts 201 and 204 of the Commission's Uniform System of Accounts for Natural Gas Companies, and to FPC Forms No. 2, No. 2-A, and No. 11, required by §§260.1, 260.2, and 260.3 in Chapter I, Title 18 of the Code of Federal Regulations, herein prescribed, are necessary and appropriate for the administration of the Natural Gas Act.

(4) Since the amendments prescribed herein, which were not included in the notice of the proceeding, are consistent...
with the prime purpose of the Proposed Rulemaking, further notice thereof is unnecessary.

(5) Good cause exists for making the amendments to the Uniform System of Accounts for Public Utilities and Licensse s and Natural Gas Companies ordered herein effective on January 1, 1977, and the amendments to PPC Forms No. 1, No. 1-F, No. 2, No. 2-F, No. 5, and No. 11 ordered herein, effective for the reporting year 1977.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 3, 4, 301, 304, 308, 309, and 311 (41 Stat. 1063, 1085; 49 Stat. 833, 839, 845, 855, 858, 859; 16 U.S.C. 796, 797, 825, 826, 828, 829) and of the Natural Gas Act, as amended, particularly sections 8, 10, and 16 (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i, 717j), orders:

PART 101—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS A AND CLASS B)

(A) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class A and Class B Public Utilities and Licensees in Part 101, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph I of Instruction 17. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition. As amended, this portion of General Instruction 17 reads:

General Instructions

17. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432, Allowance for Borrowed Funds Used During Construction—Credit.

(2) Subparagraph "(17) Allowance for Funds Used During Construction" of Electric Plant Instruction "3. Components of Construction Cost," is amended by revising the first sentence of the paragraph and by adding two new paragraphs (a) and (b) immediately following the first paragraph. As amended, subparagraph (17) reads:

Electric Plant Instructions

3. Components of Construction Cost

(17) "Allowance for funds used during construction" includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, not to exceed, without prior approval of the Commission, allowances computed in accordance with the formula prescribed in paragraph (a) below. No allowance for funds used during construction charges shall be included in these accounts upon expenditures for construction projects which have been abandoned.

(a) The formula and elements for the computation of the allowance for funds used during construction shall be:

\[ A = \frac{S}{W} + \frac{D}{P + C} \]

\[ A = \left[ 1 - \frac{S}{W} \right] \left[ \frac{P}{D + P + C} \right] \]

3. Interest Charges

419.1 Allowance for funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 3(17).

419.2 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 3(17).

PART 104—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS C AND CLASS D)

(B) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class C and Class D Public Utilities and Licensees in Part 104, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph "15. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition." As amended, this portion of General Instruction 15 reads:
RULES AND REGULATIONS

Electric Plant Instructions

2. Components of Construction Cost.

A. The cost of construction of property chargeable to the electric plant accounts shall include, where applicable, the cost of labor; materials and supplies; transportation of materials; amortization of construction plant; interest paid and interest charged; taxes, rates, and permits; and other similar items as may be properly includable in construction costs.

B. The formula and elements for the computation of the allowance for funds used during construction shall be:

\[ A = \left[ \frac{S}{W} + \left( \frac{D}{D + P + C} \right) \left( 1 - \frac{S}{W} \right) \right] \left( \frac{P}{D + P + C} + \frac{C}{D + P + C} \right) \]

During Construction—Credit immediately following account 

431, Other Interest Expense and revising the subtotal caption “Total Interest Charges” to read “Net Interest Charges.” As amended, the Chart of Income Accounts reads:

Income Accounts (Charts of Accounts)

1. OTHER INCOME AND DEDUCTIONS

A. OTHER INCOME

419.1 Allowance for other funds used during construction.

B. INTEREST CHARGES

432 Allowance for borrowed funds used during construction—Credit. Net interest charges.

4. The text of the Income Accounts is amended by revising the title and text of account “419.1, Allowance for Funds Used During Construction,” and by adding a new account 432. Allowance for Borrowed Funds Used during construction shall be capitalized on plant which is completed and ready for service.

3. INTEREST CHARGES

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS A AND CLASS B)

(C) Effective January 1, 1977, the Commission’s Uniform System of Accounts for Class A and Class B Natural Gas Companies in part 201, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraphs “I” of General Instruction 17. “Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.” As amended, this portion of General Instruction 17 reads:

General Instructions

17. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432. Allowance for Borrowed Funds Used During Construction—Credit.

(2) Subparagraph “(17) Allowance for Funds Used During Construction” of Gas Plant Instruction 3, “Components of Construction Cost,” is amended by revising the present paragraph, and immediately following the present paragraph, adding two new paragraphs (a) and (b). As amended, subparagraph (17) reads:

Gas Plant Instructions

3. Components of Construction Cost.

(17) “Allowance for funds used during construction” includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, not to exceed amounts computed in accordance with the formula prescribed in paragraph (a) below, except when such other funds are used for construction purposes used for exploration and development.

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or leases acquired after October 7, 1969, no allowance on such other funds shall be included in these accounts.

\[
A_i = s \left( \frac{S}{W} \right) + d \left( \frac{D}{D + P + C} \right) \left( 1 - \frac{S}{W} \right)
\]

\[
A_i = \left[ 1 - \frac{S}{W} \right] \left[ p \left( \frac{P}{D + P + C} \right) + c \left( \frac{C}{D + P + C} \right) \right]
\]

\( A_i \) = Gross allowance for borrowed funds used during construction rate.

\( A_i \) = Allowance for other funds used during construction rate.

\( S \) = Average short-term debt.

\( s \) = Short-term debt interest rate.

\( D \) = Long-term debt.

\( d \) = Long-term debt interest rate.

\( P \) = Preferred stock.

\( p \) = Preferred stock cost rate.

\( C \) = Common equity.

\( c \) = Common equity cost rate.

\( W \) = Average balance in construction work in progress.

(b) The rates shall be determined annually. The balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock shall be the weighted average cost determined in the manner indicated in §154.63 of the Commission's Regulations Under the Natural Gas Act. The cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdiction. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used. The short-term debt balance and related cost and the average balance for construction work in progress shall be estimated for the current year with appropriate adjustments as actual data becomes available.

Note.—

(3) The Chart of Income Accounts is amended by revising the title of account “419.1, Allowance for other funds used during construction” to read “419.1, Allowance for Borrowed Funds Used During Construction.” Credit, immediately following account “431, Other Interest Expense.” As amended, these portions of the text of the Income Accounts read:

Income Accounts

2. OTHER INCOME AND DEDUCTIONS

3. INTEREST CHARGES

419.1 Allowance for other funds used during construction.

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 3(17).

3. INTEREST CHARGES

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 3(17).

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS C AND CLASS D)

(D) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class C and Class D Natural Gas Companies in Part 204, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph “15. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.” As amended, this portion of General Instruction 15 reads:

General Instructions

15. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432, Allowance for Borrowed Funds Used During Construction—Credit.

(2) Amend Gas Plant Instruction “15. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.” by
revising the first paragraph and lettering it "A." and by adding two new paragraphs, B. and C. immediately following the first paragraph as amended, instruction 2 reads:

Gas Plant Instructions

2. Components of Construction Cost.

The cost of construction of property chargeable to the gas plant accounts shall include, where applicable, fees for construction certificate applications paid after grant of certificate, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction, privileges and permits, special machine service, allowance for funds used during construction, not to exceed without prior approval of the Commission amounts computed in accordance with the formula prescribed in paragraph B below, training costs and such portion of general engineering, administrative salaries and expenses, insurance, taxes and other analogous items as may be properly includible in construction costs. (See operating expense instruction 3.) When the utility employs its own funds in exploration and development on leases acquired after October 7, 1969, no allowance for funds used during construction on such funds shall be included in these accounts.

B. The formula and elements for the computation of the allowance for funds used during construction shall be:

\[ A = \frac{S}{W} \left( \frac{D}{D+P+C} \right) \left( 1 - \frac{S}{W} \right) \]

W = Average balance in construction work in progress.

C. The rates shall be determined annually. The balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock shall be the weighted average cost determined in the manner indicated in § 154.63 of the Commission's Regulations Under the Natural Gas Act. The cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdiction. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used. The short-term debt balances and related cost and the average balance for construction work in progress shall be estimated for the current year with appropriate adjustments as actual data becomes available.

(3) The Chart of Income Accounts is amended by revising the title of account "419.1, Allowance for Funds Used During Construction," to read "419.1, Allowance for other funds used during construction." and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense," as amended, these portions of the text of the Income Accounts read:

Income Accounts

2. OTHER INCOME AND DEDUCTIONS

419.1 Allowance for other funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

3. INTEREST CHARGES

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

PART 141—STATEMENT AND REPORTS (SCHEDULES)

PART 260—STATEMENT AND REPORTS (SCHEDULES)

(E) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 1, Annual Report for Electric Utilities, Licensees and Others (Class A and Class B), prescribed by § 141.1, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachments B and C hereto.

(F) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B), prescribed by § 260.1, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachments B and D hereto.

(G) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 1-F, Annual Report for Public Utilities and Licensees (Class C and Class D), prescribed by § 141.2, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachment E hereto.

(H) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 2-A, Annual Report for Natural Gas Companies (Class C and Class D), prescribed by § 260.2, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachment F hereto.

(J) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 5, Monthly Statement of Electric Operating Revenue and Income, prescribed by § 141.25, Chapter I, Title 18 of the Code of Federal Regulations is amended, all as set out in Attachment G hereto.

(K) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

Kenneth F. Plumb, Secretary.

Applicants:

Attorney for Respondent

Accounting Firms

Price Waterhouse & Co.

Price Waterhouse & Co.

Price Waterhouse & Co.

419.1 Allowance for other funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

3. INTEREST CHARGES

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
RULES AND REGULATIONS

American Gas Association (AGA)
Edison Electric Institute (EEI)
Interstate Natural Gas Association of America (INGA)

Electric Utility Companies

Alabama Power Company
American Electric Power Service Corporation
Appalachian Power Co.
Indiana and Michigan Electric Co.
Kentucky Power Company
Kingston Power Co.
Michigan Power Company
Ohio Power Company
Wheeling Electric Co.
Arkansas Power & Light Company
Carolina Power & Light Company
Cincinnati Gas & Electric Company
Lawrenceburg Gas Company, The
Union Light, Heat and Power Company, The
West Harrison Gas & Electric Company, The
Cleveland Electric Illuminating Company, The
Consolidated Edison Company of New York, Commonwealth Edison
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power and Light Company, The
Detroit Edison Company, The
Duke Power Company
Florida Power & Light Company
Florida Power Corporation
General Public Utilities Corporation
Georgia Power Company
Gulf Power Company
Gulf States Utilities Company
Idaho Power Company
Iowa Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Kansas City Power & Light Company
Kansas Gas and Electric Company
Long Island Lighting Company
Middle South Services, Inc.
Arkansas-Missouri Power Company
Arkansas Power & Light Company
Louisiana Power & Light Company
Mississippi Power & Light Company
New Orleans Public Service, Inc.
Minnesota Power & Light Company
New England Electric System
Granite State Electric Company
Massachusetts Electric Company
Narragansett Electric Company, The
New England Power Company
Niagara Mohawk Power Corporation
Northeast Utilities
Connecticut Light & Power Co., The
Holyoke Power & Electric Company
Holyoke Water Power Co.
Western Massachusetts Electric Co.
Northern States Power Company
Ohio Edison Company
Pennsylvania Power Company

Other Tand Power Company
Pacific Gas and Electric Company
Pennsylvania Power & Light Company
Philadelphia Electric Company
Portland General Electric Company
Public Service Company of Indiana, Inc.
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas and Electric Corporation
San Diego Gas & Electric Company
Southern California Edison Company
South Carolina Electric & Gas Company
Tampa Electric Company
Tulsa Edison Company, The
Tucson Gas & Electric Company
Utica Electric Company
Utah Power & Light Company
Washington Water Power Company, The
West Texas Utilities Company
Wisconsin Power & Light Company

Natural Gas Companies

Columbia Gas Transmission Corporation
Consolidated Gas Supply Corporation
Consolidated System LNG Company
El Paso Natural Gas Company
National Gas Pipelines of America
Northern National Gas Company
Panhandle Eastern Pipe Line Company
Trunkline Gas Company
Texas Eastern Transmission Corporation

State Regulatory Commissions

Florida Public Service Commission
Public Service Commission of the State of New York

Rural Electric Cooperative Associations

National Rural Electric Cooperative Association

Public Systems

Southern Engineering Company

Others

First National City Bank
Dan L. Neldner
Stone & Webster Management Consultants, Inc.

[FR Doc.77-4995 Filed 2-14-77; 10:55 am]

SUBCHAPTER H—REGULATIONS UNDER THE EMERGENCY NATURAL GAS ACT OF 1977

PART 295—EMERGENCY REGULATIONS

Order No. 4

(1) Response to the opportunities made available by section 6 of the Act has been encouraging. Voluntary transactions and self-help measures have aided in easing gas supply problems somewhat.

Pipeline or distribution companies in imminent peril of curtailing high priority loads are encouraged to undertake every possible purchase of available natural gas and arrange for its transportation through voluntary transactions. Distribution companies in difficulty are urged to work with their suppliers in making the necessary search or arrangements. To the extent that such transactions may be effected through existing Federal Power Commission programs and regulations, no additional reporting requirements will be imposed by the Administrator.

Section 12 of the ENGA requires weekly reporting of "prices and volumes of natural gas delivered, transported or contracted for" under that Act. Therefore, within 72 hours of the commencement of deliveries in any transaction under the Act, the purchaser or recipient of gas shall advise the Administrator in writing:

(a) The section of the Act or Administrator's orders or regulations under which the transaction is made;
(b) The estimated volumes to be delivered on a daily basis and in the aggregate;
(c) The price (on an Mcf basis) and the basis on which such price is derived;
(d) The name, business address and telephone number of the seller or sellers;
(e) How the gas is being transported and the compensation paid for transportation;
(f) Whether the gas involved has been sold under FPC emergency procedures within 60 days of the report;
(g) Other relevant terms and conditions of the transaction.

If the deliveries began before this order, this information shall be filed by February 16, 1977, or within 72 hours of receipt of actual notice of this order.

(3) On the second Wednesday following the commencement of deliveries and on each Wednesday thereafter, the recipient shall report the actual prices and volumes for all deliveries.

(4) Any person selling gas pursuant to Paragraph 2 or 3 of Order No. 2, issued February 3, 1977, shall within 15 days of the commencement of deliveries, and on the first of each month thereafter, file with the Administrator a statement setting forth either:

(a) The details of its conversion to alternate fuel which made available the gas sold under the order. Such statement shall contain a computation of the amounts and derivation of the price being charged for the gas from the cost of alternate fuel; or
(b) A statement setting forth its overall replacement costs for gas and the method of derivation of the price charged for the sale of gas under the order from such replacement costs.

RICHARD L. DUNHAM, Administrator.

FEBRUARY 11, 1977.

[FR Doc.77-4995 Filed 2-14-77; 10:55 am]
Title 19—Customs Duties
CHAPTER I—UNITED STATES CUSTOMS SERVICE
[T.D. 77-65]
PART 150—LIQUIDATION OF DUTIES
Countervailing Duties—Spirits From Great Britain
On May 25, 1914, the Treasury Department in T.D. 34466, imposed countervailing duties on certain classes of spirits imported directly or indirectly from the United Kingdom of Great Britain and Ireland, under paragraph E of section 4 of the Tariff Act of October 3, 1913. The additional duties, equivalent to the countervailing duties charged on the exportations of rum, were 3 pence per gallon on "plain British spirits" and "spirits in the nature of spirits of wine," and 5 pence per gallon on "British compounded spirits.

This decision was then modified, and appropriate instructions were issued for clarification several times. For example, on December 11, 1914, in T.D. 34982, the collection of countervailing duties on rum was discontinued since no allowance whatever was made, or could be made, on the exportation of rum from Great Britain.

On June 20, 1935, in T.D. 47753, it was stated that:

Section 303 of the Tariff Act of 1930 carried forward the principle of its antecedents in tariff legislation and, in particular, in the Tariff Act of 1913 and section 303 of the Tariff Act of 1922, and in view of the effect that the export bounty set forth in T.D. 34466 * * * have been paid continuously since the date of T.D. 34466, the Bureau (of Customs): regards the Treasury decisions as being in full force and effect, and as being applicable to the spirits imported directly or indirectly from the United Kingdom of Great Britain and Northern Ireland and from the Irish Free State, notwithstanding that the bounties are paid by different units of the British Commonwealth of Nations.

On September 7, 1950, in T.D. 52555, it was stated in receipt of information, the 3 pence per gallon export bounty on spirits exported from the United Kingdom of Great Britain and Northern Ireland was repealed, and T.D.'s 34466 and 47753 were modified "so as not to rule the assessment of countervailing duties on imported 'plain British spirits' and 'spirits in the nature of spirits of wine.'" Then, in T.D. 55812, which was published in the Federal Register of January 24, 1963 (28 FR 635), liqueurs described as "British Spirits Sweetened in Bond," and exported to the United States by Long John and Northern Ireland were exempted. The Treasury Department has been informed that by British Revenue Act of 1968, the British Government has terminated all remaining export allowances on spirits. That Act provided, however, that export allowances would continue on shipments under contract made prior to June 30, 1968; and, after March 1, 1969, it is hereby determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), are no longer being paid or bestowed upon the exportation of spirits from Great Britain. Accordingly, countervailing duties will not be collected on spirits imported from Great Britain which have been paid or will be entered, or withdrawn from warehouse, for consumption on or after February 15, 1977. Neither will such duties be collected on any entries of such spirits which have been liquified or the liquidation of which has not become final by such date.

Title 29—Labor
CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR
PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Vermont; Amended Approval of State

1. Background. Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved under section 18 (c) of the Act and Part 1902 of this chapter. On October 10, 1973, a notice was published in the Federal Register (38 FR 28658) of the approval of the Vermont plan and of the adoption of Subpart U of Part 1952 describing the plan. On March 31, 1976, the State of Vermont submitted a developmental change supplement to the plan containing a prototype of the Vermont State plan (see Subpart B of 29 CFR Part 1952).

On October 19, 1976, a notice was published in the Federal Register (41 FR 46066) of the approval of the prototype of the Vermont State plan. That notice, however, failed to report that the State, by letter dated March 29, 1974, submitted its existing State plan with a correction sticker containing information on complaints against State administration of its program (CASPA) and had distributed the sticker to employers in Vermont. Such sticker when attached to the existing Vermont plan would enable such plan to meet all requirements of § 1902.10. Therefore, in order to correct any misconception as to the existing Vermont plan and to approve that plan, this amended approval is necessary. The Treasury Department, on April 19, 1976, noticed also failed to codify the approved Vermont plan as a completed development step.

2. Description of the posters. The posters are a prototype of the Vermont State plan and the existing State plan with a CASPA correction sticker which is to be posted at all covered workplaces in the State. The prototype demonstrates the proper dimensions for the poster, the heading and in the body of the poster, and the required provisions under 29 CFR 1982.10. Both the existing poster and the prototype contain, among other things, provisions required under 29 CFR 1982.10, the right to remain anonymous as a result, that employees have the right to participate in inspections, their protection against discharge or discrimination under both Federal and State laws for the exercise of their rights under the Federal and State laws, and their right to file complaints with the Occupational Safety and Health Administration concerning the administration of the State program.

3. Location of the plan and CASPA correction sticker for inspection and copying. A copy of the posters, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N3608, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N3626, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1804, 111 Federal Building, Boston, Massachusetts 02203; Department of Labor and Industry, State Office Building, Montpelier, Vermont 05602.

4. Public participation. Under § 1953.2 of this chapter, the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the existing Vermont State plan and the prototype incorporate all of the provisions required under 29 CFR 1982.10 (a) (5) and 1982.10 (a) (3) (39 FR 39506, November 5, 1974). Accordingly it is believed that further public comment is unnecessary.

5. Decision. After careful consideration, the Vermont State posters outlined above are approved under Part 1953, on condition that the revised State poster
is printed exactly as shown on the prototype, which printing, with appropriate distribution, should occur not later than October 15, 1977, at which time substitution for the existing State poster may be made. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In addition 29 CFR 1952.274 is hereby amended to reflect completion of a developmental step.

Section 1952.274 is amended to read as follows:

§ 1952.274 Completed developmental steps

(e) In accordance with the requirements of § 1952.10 the Vermont Safety and Health Poster for private and public employees as amended by the attachment informing the public of its right to comment on February 9th, 1977.

§ 1952.274 is hereby amended to reflect completion of a developmental step.

Section 1952.274 is amended to read as follows:

§ 1952.274 Completed developmental steps

(e) In accordance with the requirements of § 1952.10 the Vermont Safety and Health Poster for private and public employees as amended by the attachment informing the public of its right to comment on February 9th, 1977.


Maurice W. Roches
Director, Correspondence and
Directives Office (Controller)

February 9, 1977.

The newly adopted standards constitute new §§ 251.9, 251.10, 251.11, and 201.12 to this part, and read as set forth below:

Sec. 251.9 Scope.
251.10 Storage limitations.
251.11 Protection provided.
251.12 Quantity-distance determinations.

Authority: Title 10, United States Code, section 172.

§ 251.9 Scope.
(a) This section details quantity-distance standards for the storage of all types of ammunition and explosives in natural caverns or in excavated chambers below the natural ground surface.

(b) The provisions of this section do not apply to storage in earth-covered magazines built above grade; standards for which appear in “DoD Ammunition & Explosives Safety Standards” DoD 5154.48.

§ 251.10 Storage limitations.
Ammonium and explosives of different kinds may be mixed in underground storage only to the extent permitted by the compatibility rules stated in DoD 5154.48. In addition, ammunition containing incendiary or smoke-producing fillers, flammable liquids or gases, or toxic agents, when stored underground, must be in single-chamber sites.

§ 251.11 Protection provided.
(a) Chamber spacing. (1) Minimum separation distances between chambers will provide a high degree of protection against propagation of explosions by the mechanism of spalling of rock and subsequent impact on the contents of the chamber adjacent to one in which the initial explosion occurs. This ensures that the effects on structures and persons exposed at large distances will be limited to those from the contents of one chamber. If such minimum separation is not provided, the explosive quantities involved must be added together for purposes of determining effects at distant exposures.

(b) Exterior distances. Separation distances from stored ammunition and explosives to inhabited buildings and public traffic routes are intended to limit property damage and injury to persons caused by ground shock, air blast, or debris. The distances depend upon depth of overburden, type of soil or rock, and stored explosive quantity per unit chamber volume (loading density). The required inhabited building distance for a given quantity and storage condition is that corresponding to the dominant (farthest-reaching) effect. It is therefore the largest of the distances determined to be necessary for protection against the individual effects considered in turn. The required public traffic route distance will generally be sixty percent of the inhabited building distance so obtained.

§ 251.12 Quantity-distance determinations.
(a) Explosive quantity—(1) Determination of distance. Distances will be determined on the basis of the total quantity of explosives, propellants, pyrotechnics, and incendiary materials in the individual chambers, unless the total quantity is subdivided so as to prevent immediate communication of an incident from one subdivision to another.

(2) Types of storage sites—(i) Cavern storage site. A natural cavern or former mining excavation adapted for the storage of ammunition and explosives.

(ii) Chamber storage site. An excavated chamber or a series of excavated chambers especially suited to the storage of ammunition and explosives. A cavern may be subdivided or otherwise structurally modified for use as a chamber storage site.

(iii) Connected-chamber storage site. A chamber storage site consisting of two or more chambers connected by ducts or passageways. Such chambers may be at the ends of branch tunnels or a main passageway.

(n) Single-chamber storage site. An excavated chamber with its own access to the natural ground surface, not connected to any other storage chamber.

(3) Evaluation of explosive yield. All of the propellants and explosive materials of ammunition of Hazard Divisions 1.1 or 1.3 (see Chapter 5, DoD 5154.48) subject to involvement in a single incident will be assumed to contribute to the explosion yield as would an equal weight of TNT. Any significant differences in energy release per unit mass of the compositions involved from that of TNT must be taken into account. A connected chamber storage site or cavern storage site containing Hazard Division 1.1 or 1.3 (see Chapter 5, DoD 5154.48), or both, will be treated as a single-chamber site, unless explosion communication is prevented by adequate subdivision or chamber separation.

(b) Distance measurement. (1) The chamber interval is the shortest distance between the natural walls of two adjacent chambers. The interval between chambers formed by subdivision of a cavern is the thickness of competent barrier constructed between them.

(2) The thickness of overburden or earth cover over a chamber is the shortest distance from the natural chamber ceiling to the natural ground surface.

(3) Distances to inhabited buildings and public traffic routes will be measured as follows:
(1) A distance determined by blast or debris issuing from a tunnel entrance at the ground surface will be measured from the tunnel entrance to the nearest wall or point of the location to be protected, using the extended centerline of the main passageway as a reference line for directional effects.

A distance determined by ground shock will be measured as the length of the straight line joining the nearest natural wall of a chamber containing ammunition to the nearest wall or point of the location to be protected.

(iii) A distance determined by blast from an uncontained explosion, or by surface ejecta, will be measured from the point on the natural ground surface nearest the natural chamber ceiling to the nearest wall or point of the location to be protected.

(c) Chamber interval. (1) The separation distance $D_{se}$ between chambers required to ensure prevention of explosion containment and maximum shock impact of spalled rock will be calculated from $D_{se}=1.95W^{0.6}$ where $D_{se}$ is in feet and $W$ is the net weight in pounds of all the propellants and explosives in ammunition of Hazard Division 1.1 or 1.3 in the chamber, adjusted for any significant differences in energy release from that of TNT as required by § 251.12(a) above. The chamber separation distance will not, however, be less than 16 feet. Chamber entrances at the ground surface, or entrances to branch tunnels off the same side of a main passageway, must be separated by a distance not less than the chamber interval as determined above. Entrances to branch tunnels off opposite sides of a main passageway must be separated by at least twice the width of the main passageway.

(2) The chamber separation distance $D_{se}$ required to prevent damage to stored ammunition will be calculated from the following formulas:

\[ D_{se} = \begin{cases} 3.5W^{0.6} & \text{(sandstone),} \\ 4.9W^{0.6} & \text{(limestone),} \\ 5.0W^{0.6} & \text{(granite).} \end{cases} \]

where $D_{se}$ is in feet and $W$ is in pounds of propellants and explosives in ammunition of Hazard Division 1.1 and 1.3 (see Chapter 5, DoD 5154.45). (3) The separation distance $D_{se}$ to ensure prevention of explosion communication and $D_{ac}$ to prevent damage to stored ammunition have been computed and are listed in Table B-1.

(4) Chambers separated by at least the distances required in § 251.12(c)(1) above may be used to the limit of their physical capacity to store ammunition of Hazard Division 1.2 and 1.4 (see Chapter 5, DoD 5154.45) except for specific Hazard Division 1.2 items having special stacking and restrictions (see paragraph 5-4B of DoD 5154.45). If stored in the same chamber with ammunition of Hazard Division 1.1 or 1.3 (see Chapter 5, DoD 5154.45), however, the propellant and explosive content of ammunition of Hazard Divisions 1.2 and 1.4 (see Chapter 5, DoD 5154.45), must be added to that of the other divisions to obtain the net explosive quantity for distance determinations.

(2) Inhabited building distance. The inhabited building distance will be taken as the largest of the distances required for protection against ground shock, air blast, or debris, determined by computations carried out as described in the following paragraphs. For the convenience of the user, each of the functions to be evaluated is tabulated; straight-line interpolation is permitted in all tables.

(1) For protection of residential buildings against significant structural damage by ground shock, the maximum particle velocity induced in the ground at the building site must not exceed the following values:

- 2.4 inches per second in sand, gravel, or moist clay (sound speed 3000 to 5000 feet per second).
- 4.5 inches per second in soft rock (sound speed 6000 to 10,000 feet per second), and
- 9.6 inches per second in hard rock (sound speed 15,000 to 20,000 feet per second).

Unless data specific to the site being evaluated are available regarding ground shock attenuation in the earth materials between the potential explosion source and the exposed site, the required inhabited building distance $D_{ib}$ will be calculated from the appropriate one of the following expressions:

\[ D_{ib} = \begin{cases} 2.1W^{0.6} & \text{(sand, gravel),} \\ 11.1W^{0.6} & \text{(soft rock),} \\ 12.5W^{0.6} & \text{(hard rock),} \end{cases} \]

where $D_{ib}$ is in feet and $W$ is the explosive quantity in pounds determined in accordance with § 251.12(a). The dimensionless multiplier $f_{ib}$ is a decoupling factor, given as a function of loading density by the formula $f_{ib}=(4/15)k-w$, where $w$ is the explosive quantity $W$ in pounds divided by the chamber volume in cubic feet.

Values of $f_{ib}$ are listed in Table B-2. To obtain an inhabited building distance $D_{ib}$, a numerical value read from the appropriate column of Table B-2 must be multiplied by the value of $f_{ib}$ read from Table B-7, Column 2.

(2) Distances required for protection of inhabited buildings against the effects of air blast and surface debris depend on the depth of overburden, or earth cover, over the storage chamber. The minimum depth $C_{v}$ is required to ensure containment of an explosion (except for venting of gases through tunnels), and to ensure that no significant disruption of surface material occurs, will be calculated from $C_{v}=5.0W^{0.6}$ in pounds. For depth of overburden less than this, the effects of both air blast and the projection of debris must be considered. In particular, if the actual cover depth $C$ is less than $C_{v}$ given by $C_{v}=5.0W^{0.6}$ blast at large distances may not be suppressed appreciably below that from an explosion on the surface. In that case, inhabited building and public traffic route distances for ground storage, specified elsewhere in this publication, must be utilized, including any applicable minimum distances required for protection against fragments from ammunition of Hazard Divisions 1.1, 1.2, or 1.3 (see Chapter 5, DoD 5154.45). Values of $C_{v}$ and $C$ are listed in Table B-3.

(3) If the depth of overburden $C$ equals or exceeds $C_{v}$ calculated from the formula above, the effects of blast issuing from entrances at the ground surface must be considered. These effects will be functions of direction relative to the axis of the passageway in which it emerges at the ground surface. The absence of data and analysis on far-field blast propagation specific to the site of such a blast has been evaluated, five sectors will be defined as shown in Figure B-1. In each sector the distance required for protection of inhabited areas against blast will be taken as proportional to the cube root of the net explosive quantity $W$, defined by $W_{ib} = W/a$, where $n=1$ or 2, and $k=1$ or 3, as follows:

- $k=1$, if the storage site has not more than one entrance at the ground surface.
- $k=3$, if the storage site has two or more entrances, and if the blast waves issuing from those entrances are not expected to mutually reinforce owing to their proximity.

(4) Whether mutual reinforcement of blast issuing from two or more entrances occurs will be determined by carrying out the subsequent analysis on the tentative assumption that $n=1$. If none of the sectors from one entrance overlaps any of those from another, the interaction may be ignored and the distances determined by repeating the analysis with $n=2$.

(5) With the foregoing definitions, the distances $D_{ib}, D_{ib}^{*}, D_{ib}^{**}, D_{ib}$ required for protection of inhabited areas against blast in the sectors defined in Figure B-1 will be calculated as follows:

\[ D_{ib} = \begin{cases} 19W^{0.6} & \text{in the sector between 180 and 120 degrees,} \\ 33W^{0.6} & \text{in the sector between 120 and 60 degrees,} \\ 50W^{0.6} & \text{in the sector between 60 and 30 degrees,} \\ 69W^{0.6} & \text{in the sector between 30 and 0 degrees,} \end{cases} \]

where $W$ is the net explosive weight in pounds.
(6) If the depth of overburden \( C \) is less than \( C \), calculated from the first of the formulas given in \( \text{§ 231.13}(d)(2) \), the effects of debris projected from the ground surface above the explosion site must be evaluated. The distance \( D_{is} \) required for the protection of inhabited areas against debris damage will be calculated from \( D_{is} = f_s W^{3/4} \) where \( W \) is the explosive quantity in pounds, \( f_s \) is a function of the scaled depth of overburden \( C/W^{3/4} \), and \( f_s \) is a function of the chamber loading density \( \rho \). The function of earth cover, \( f_s \), depends on the type of rock in the vicinity of the storage chamber. It is given graphically in Figure B-2 for hard rock (e.g., granite, limestone) and for soft rock (e.g., sandstone, sand). The factors \( f_s \) are given by the formula \( f_s = (3/5) w^{3/4} \) where the loading density \( w \) is expressed in pounds per cubic foot of chamber volume.

(7) Values of \( D_{is}/f \) are listed in Table B-3 for hard rock and in Table B-4 for soft rock, for values of scaled overburden thickness \( C/W^{3/4} \) given at the heads of the columns. These values of scaled cover correspond to the curved points on the curves in Figure B-3, and are such that straight-line interpolation between columns of the tables is a satisfactory procedure for intermediate values of scaled cover.

(8) To obtain a distance \( D_{is} \), the scaled depth of overburden \( C/W^{3/4} \) must be calculated, where \( C \) is the depth of overburden in feet measured as the shortest distance from the natural chamber ceiling to the natural ground surface above, and \( W \) is the explosive quantity in pounds. The appropriate column in either Table B-5 or B-6 can be entered upon the numerical value determined for the scaled depth of overburden \( C/W^{3/4} \) or by using interpolation between columns. The value obtained from Table B-5 or B-6 must be multiplied by the value of \( f_s \) read from Table B-7.
### Table B-4.—Distances to protect against air blast

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### Table B-5.—Distances to protect against hard rock debris

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### Table B-6.—Distances to protect against soft rock debris

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### Table B-7.—Functions of loading density

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publication requirements, the document is
order to comply with the Day-of-the-Week
lished on February 14, 1977 (page 9013). In
FOR FURTHER INFORMATION CON­
ACTION: Final Rule.
AGENCY: Civil Service Commission.

SUMMARY: This amendment excepts
from the competitive service under Schedule
C one position of Secretary to the Assistant
Secretary for Congressional Relations because of the confidential nature of the position.

FOR FURTHER INFORMATION CON­
CONTACT:
Dean Larrick, 202-632-4533.

Accordingly, 5 CFR 213.3304(c)(2) is
added as follows:
§ 213.3304 Department of State.

(c) Office of the Assistant Secretary for Congressional Relations.

(2) One Secretary to the Assistant Secretary.

(5 U.S.C. 3301, 3302; EO 10872, 3 CFR 1954­
1958 Comp. p. 218.)

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

[FR Doc. 77-4684 Filed 2-14-77; 7:45 am]

PART 213—EXCEPTED SERVICE
Consumer Product Safety Commission

None: The following document was pub­
lished on February 14, 1977 (page 9013). In
order to comply with the Day-of-the-Week
publication requirements, the document is
being reprinted below without change.

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This amendment excepts
from the competitive service under Schedule
C two positions of Special Assistant to a Commissioner because they are confidential in nature.

FOR FURTHER INFORMATION CON­
CONTACT:
Dean Larrick, 202-632-4533.

Accordingly, 5 CFR 213.3306(c) is
added to read as follows:
§ 213.3306 Consumer Product Safety
Commission.

(c) Two Special Assistants to a Com­
mssioner.

(5 U.S.C. 3301, 3302; EO 10872, 3 CFR 1954­
1958 Comp., p. 218.)

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

[FR Doc. 77-4683 Filed 2-11-77; 7:45 am]
study report has been forwarded for
shall be limited to that part of the local
prospective local sponsoring agency for
held the final public meeting and filed a
funds from other Federal sources, the
affected costs directly attributable to the
can be included in the amount credited.
§ 276.6 General policy.
(a) This provision will be applied only
locations where a congressionally au-
authorized study is underway or where
the study report has been forwarded for
Executive Branch review or for consider-
consideration by Congress. If a study is un-
dway, the District Engineer must have
held the final public meeting and filed a
draft EIS with CEQ prior to certifica-
tion. The Senate Committee report
specifically stated that:
** ** This flexibility should in no way be
interpreted as a Federal assurance of late
approval of any project. While it is in no way
a Federal commitment, this provision as-
sures the city that the work it undertakes,
certified, will not be removed from the
cost-benefit analysis. And it assures the city
that such local work will be credited toward
the local costs of cooperation, should the
project be later authorized. This will not,
however, qualify the community for any cash
refunds. If the local costs on such certified
work exceed the local share, when later com-
puting the local contribution, the local government must assume that extra cost. ** **

§ 276.7 Procedures.
(a) Non-Federal entities desiring cer-
ification credit under the provisions of
section 134a of Pub. L. 94-587 should
confer with the District Engineer and
submit a written application to him. The
application will include full description
of planned work, plans, sketches, and
similar engineering data and information
sufficient to permit analysis of the local
proposals.
(b) The District Engineer shall review
the engineering adequacy of the local
proposals and their relation to the possible
selected Federal Plan and determine
what part of the proposed local improve-
ment would be eligible for certification.
Prior to the submission of a Federal
Engineer will obtain the concurrence-
to CEQ prior to certification. This
recommendation will be forwarded by
a concomitant request from a State, city,
municipality or public agency that is the
prospective local sponsoring agency for
the contemplated Federal plan under
study.
(c) Work eligible for certification
shall be limited to that part of the local
improvement directly related to a flood
control purpose.
(d) Only local work commenced after
certification shall be eligible for certifi-
cation except for local engineering work
noted below in § 276.6(e). The work
proposed for certification must meet the
following conditions:
(1) The local work must have been
completed before the date of certification,
separately useful even if the Federal
Government does not authorize and con-
struct the contemplated project; the
work to be accomplished by the non-
Federal entity will not create a potential
hazard; certification of the proposal will
be in the general public interest.
(e) Costs assigned to that part of the
local improvement that would constitute
an impermissible expansion of the recom-
manded Federal plan can be included for
credit toward required local coopera-
tion. The amount creditable shall equal
the expenditures made by the non-Fed-
eral entity for work that would have been
accomplished at Federal expense if the
entire project were carried out by the
Corps of Engineers. However, credit will
not exceed the amount the District Engi-
neer considers a reasonable estimate of
the reduction in Federal expenditures
resulting from the local work. Costs of
subsequent maintenance will not be
credited. In the event that the local con-
struction work is financed by a Federal
non-reimbursable grant or Federal
funds from other Federal sources, the
amount creditable against future local
cooperation requirements shall be re-
duced by a commensurate amount.
However, the amount attributable to that
part of the work certified shall not be
credited toward requirements for the
local improvement.
(f) Local interests are responsible for
developing all necessary engineering
data and information for the work they
propose to undertake. However, those non-Federal engineering costs and
overhead costs directly attributable to the
creditable part of local work may be
incurred in the amount credited.
§ 276.8 Cessation.
The legislation specifies that this au-
mary shall cease to be in effect after
December 31, 1977. No requests for certifi-
cation will be processed after that date.
To be eligible for credit, proposals for
local work must have been certified by
the District Engineer no later than De-
cember 31, 1977. There is no requirement
that the local improvement be initiated
or accomplished by that date.

[F.R. Doc. 77-4812 Filed 2-14-77; 8:45 am]

Title 40—Protection of Environment
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY
SUBCHAPTER C—AIR PROGRAMS
[FR 78-6]

PART 52—APPROVAL AND PROMULGA-
TION OF IMPLEMENTATION PLANS
Massachusetts Revision
On May 31, 1978 (37 FR 10642), pursuant
to section 110 of the Clean Air Act
RULES AND REGULATIONS

and 40 CFR Part 51, the Administrator approved with exceptions the Massachusetts Implementation Plan for the attainment of national ambient air quality standards.

On November 17, 1976, there was published in the Federal Register (41 FR 50700) a proposal for a revision to the Massachusetts State Implementation Plan (SIP), as permitted pursuant to Chapter 494, Commonwealth of Massachusetts' "An Act Relative to Periodic Review of Ambient Air Quality Standards," which requires the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) to review applicable portions of the SIP to determine if any of the regulations are more stringent than necessary. These violations are as follows:

1. During the comment period, comments contending that the model used by the Massachusetts Department, an EPA approved computer program known as PTATP, is overly conservative. They also indicated that additional data be submitted that was not used in the Massachusetts Department's modeling calculations. In addition, they requested to be included in the revision to burn higher sulfur content fuel oil, which would establish a monitoring and testing program and other enforceable conditions.

The Regional Administrator listed in the proposed rulemaking notice twelve sources which appeared to be approvable. In addition, further technical information would be requested regarding Borden, Inc., Chemical Division, Leominster, Massachusetts (Borden), which appeared to have the potential to cause violations of the SO, primary NAAQS.

During the comment period, comments were received from the Connecticut Department of Environmental Protection (Connecticut DEP), the Federal Energy Administration (FEA), and Borden, Inc., Chemical Division, Leominster, Massachusetts.

The Connecticut DEP urged disapproval of the revision on the grounds that particulate emissions would be increased in an AQCR, where there are already violations of the total suspended particulate (TSP) annual and 24-hour primary standards. However, these violations, which include numerous 24-hour readings well above the primary standard, were recorded in Worcester, Massachusetts. In the rest of the AQCR affected by this revision, no exceedances of the TSP secondary standard were observed. Since sources in Worcester are excluded from the revision, and since EPA has determined that any increase in particulate emissions from the burning of higher sulfur fuel in the rest of the AQCR will not have a significant impact on the existing TSP violations in Worcester, the TSP problem in this AQCR should not be exacerbated by this revision.

FEA supported the proposed change as being economically beneficial to industry and consumers.

Borden submitted comments contending that the model used by the Massachusetts Department, an EPA approved computer program known as PTATP, is overly conservative. They also indicated that additional data be submitted that was not used in the Massachusetts Department's modeling calculations. In addition, they requested to be included in the revision to burn higher sulfur content fuel oil, which would establish a monitoring and testing program and other enforceable conditions.

EPA concurs with the Massachusetts Department's position that the model gives reasonable estimates of worst case pollutant concentrations. Both the Massachusetts Department and EPA are willing to review real data to support any claim that the model is overly conservative, but the information submitted by Borden did not contain this data. Any substantive information to demonstrate that the model should not be used. Further, the Massachusetts Department determined that the model prediction of standards violations is not reasonably affected by using the actual stack height as reported by Borden.

However, if the Massachusetts Department submits new information which demonstrates that Borden could burn a specified higher sulfur content fuel and not violate the NAAQS, the Regional Administrator will publish a Notice of Proposed Rulemaking in the Federal Register to solicit comments before any final determination is made. Therefore, at this time, Borden is being excluded from the revision to burn higher sulfur fuel because calculations show violations of the NAAQS. EPA cannot delegate its review authority over SIP revisions to the States.

Also during the comment period, the Massachusetts Department determined that their modeling of SO, secondary standard violations should be further evaluated. Secondary standard violations had been predicted for two sources, the Felters Company, Millbury, and Whitten Machine Works, Whitinsville, which appeared to be otherwise approvable. These two sources therefore cannot be approved at this time. Upon completion of the Massachusetts Department's review, if it can be shown that SO, secondary standard violations will not occur, a final rulemaking notice will be published in the Federal Register to approve these two sources.

After consideration of these comments, the Administrator has determined that the proposed revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved and promulgated as a revision to the Massachusetts Implementation Plan.

The Agency finds that good cause exists for making these actions effective on February 15, 1977 for the following reasons:

1. The implementation plan revision is already in effect under state law, and EPA approval imposes no additional regulatory burdens;

2. Immediate effectiveness of the actions enables the sources involved to proceed with certainty in conducting their affairs.


JOHN QUARLES,
Acting Administrator.

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

Subpart W—Massachusetts

§ 52.1120 [Amended]

1. In § 52.1120, paragraph (c) is hereby amended by inserting the phrase "Regulation 5.1, Sulfur Content of Fuels for New and Existing Sources", in proper chronological order.

2. Section 52.1126 is hereby amended by adding a new paragraph (e) as follows:

§ 52.1126 Control Strategy: Sulfur Oxides.

(c) Massachusetts Regulation 5.1, which allows a relaxation of sulfur in fuel limitations for the Central Massachusetts Air Pollution Control District except in the Cities of Worcester and Fitchburg, submitted on June 25, 1976 by the Secretary of Environmental Affairs, is approved except as to the following sources which remain subject to the previously approved requirements of Regulation 5.1 which stipulate that sources are permitted to burn residual fuel oil having a sulfur content not in excess of 0.55 pounds per million Btu heat release potential (approximately equivalent to 1 percent sulfur content) : Borden, Incorporated, Chemical Division, Leominster, Massachusetts; The Felters Company, Millbury, Massachusetts; Whitten Machine Works, Whitinsville, Massachusetts.

[FR Doc.77-4791 Filed 2-14-77; 8:45 am]

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOXICITIES AND EXEMPTIONS FROM TOXICITY REGULATIONS ON FOSSIL FUEL

Update and Editorial Amendments

As announced on October 27, 1976 (41 FR 47626), the Environmental Protection Agency (EPA) is reformulating the pesticide tolerance regulations contained in 40 CFR 180. The current narrative paragraphs are being put into alphabetized columnar listings for the purpose of providing easy access to development of and/or amendments to the regulations, furnishing ample room for expansion in the years ahead, and providing the public and affected parties with regulations that are easier to read. In addition to editorial revisions, certain sections are being amended by substituting acceptable common names for antiquated and unacceptable pesticide chemicals where appropriate, and the regulations are being updated and corrected where necessary.

Sections 180.117, 180.124, 180.131, and 180.141 are being amended at this time. All of these sections have been reformatted. In §180.124, the chemical name for glufosinate is being revised in the body of the regulation to reflect the most universally acceptable name (i.e., formerly N-(phosphonomethyl)glycine, now 3-(phosphonomethyl)glycine). In §180.131, the term heptadecyl-2-imidazoline acetate or 2-heptadecyl glyoxalidine (base) is now 2-heptadecyl-2-imidazoline acetate (base) or 2-heptadecyl-2-imidazoline (base). In §180.141, the list of citrus fruits including grapefruit, kumquats, lemons, limes, oranges, and tangerines separately, the single commodity group which these items make up is used, (i.e., citrus fruits). For §§180.124 (e) and (f), since these changes are nonsubstantive in nature and merely reflect the corrected and updated record, notice and public rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not prerequisite to the promulgation of these regulations.

Therefore, effective February 15, 1977, 40 CFR 180.117, 180.124, 180.131, and 180.141 are amended by deleting the sections in their entirety to read as set forth below.

Dated: February 8, 1977.

Edwin L. Johnson  
Deputy Assistant Administrator  
for Pesticide Programs.

40 CFR 180.117, 180.124, 180.131, and 180.141 are revised in their entirety as follows:

§180.117 (a) 3—Ethyl dipropylthiocarbamate; tolerances for residues.

Tolerances are established for residues of the herbicide 3-ethyl dipropylthiocarbamate in and on the following raw agricultural commodities:

<table>
<thead>
<tr>
<th>Commodity:</th>
<th>Parts per million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fruits, citrus (and hybrids thereof)</td>
<td>0.1 (N)</td>
</tr>
</tbody>
</table>

[FR Doc.77-4600 Filed 2-14-77;8:45 am]

Title 47—Telecommunication

CHAPTER II—FEDERAL COMMUNICATIONS COMMISSION

PART 73—RADIO BROADCAST SERVICES

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Reference Use of Automatic Alarm Systems for Antenna Tower Obstruction Lighting


1. On its own motion, the Commission is amending the rules for the Radio Broadcast Services and the Experimental, Auxiliary, Special Broadcast, and Other Program Distributional Services. The rules being amended concern the requirements for logging the results of daily observations of the condition of the tower lighting equipment on antenna towers which are required by the terms of the station authorization to be marked and lighted.

2. The several rule sections in Parts 73 and 74 that specify the requirements for entries in station records indicate that an entry must be made daily concerning an observation of the condition of the obstruction lights on the antenna tower(s). However, Part 17 of the Commission’s Rules concerning the marking and lighting of antenna structures provides and alternative to actually making a daily observation of the operation of the tower lights. Section 17.47(a)(2) permits as an alternative to the actual observation of the lights the use of an automatic alarm system designed to detect any failure in the obstruction lighting and provide an indication of such failure to the licensee.
3. Since the present rules for Broadcast and Broadcast Auxiliary Services do not appear to give the licensee the option of using automatic failure alarms in lieu of making daily observations, we are by this Order making editorial amendments to clearly indicate that broadcast station licensees have the option of using such devices without conflict with the record keeping requirements of Parts 73 and 74 of the Rules.

4. We conclude that the adoption of the amendments shown in the Appendix would serve the public interest. Prior notice of rule making and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553 (b)(3); (B), inasmuch as the amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

5. Therefore, it is ordered, That pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, Parts 73 and 74 of the Commission’s Rules and Regulations are amended as set forth below, effective February 17, 1977.

6. The amendments shown in the Appendix are revised to read as follows:

§ 73.383 Operating log.
(a) * * *
(5) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

§ 73.671 Operating log.
(a) * * *
(5) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

§ 73.781 Logs.
(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

§ 74.381 Logs.
(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

§ 74.481 Logs and records.
(1) If the instrument of authorization requires painting and lighting of an antenna structure:
RULES AND REGULATIONS

(i) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(ii) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

§ 74.581 Logs.

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) The station records shall be maintained for inspection at a residence, office, public building, place of business, or other suitable place, in one of the communities of license of the translator, except that the station records of a translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address where the records are kept, shall be posted in accordance with § 74.765(b) of the rules. The station records shall be made available upon request to any authorized, representative of the Commission.

(e) Station logs and records shall be retained for a period of two years.

11. In § 74.681, paragraph (b) is revised, new paragraph (c) is added, and existing paragraph (c), as amended, is redesignated as paragraph (d) to read as follows:

§ 74.681 Logs.

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) Station logs and records shall be retained for a period of two years.

13. In § 74.781, paragraph (a) (5) is revised and new paragraph (a) (6) is added, to read as follows:

§ 74.781 Logs.

(a) * * *

(6) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(e) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

14. In § 74.1281, paragraph (b) is revised, new paragraph (c) is added, and existing paragraphs (c) and (d) as amended are redesignated as paragraphs (d) and (e) to read as follows:

§ 74.1281 Station records.

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) The station records shall be maintained for inspection at a residence, office, public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address where the records are kept, shall be posted in accordance with § 74.1265(b) of the rules. The station records shall be made available upon request to any authorized, representative of the Commission.

(e) Station logs and records shall be retained for a period of two years.

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXCHANGE, AND IMPORTATION OF WILDLIFE

PART 10—GENERAL PROVISIONS

Address Changes

Subpart C of Part 10, Title 50 of the Code of Federal Regulations, is amended to show address changes for the United States Fish and Wildlife Service (hereinafter “the Service”). The first change includes a new address for mail concerning permits; a new office has been created in the Service under which this responsibility falls. The other changes show address changes for the law enforcement districts within the Division of Law Enforcement in the Service. The State of Mississippi has been reassigned to the
**RULES AND REGULATIONS**

**PART 10—DIRECTOR**

Section 10.21 Director.

(a) Mail forwarded to the Director for law enforcement purposes should be addressed:

Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036.

(b) Mail forwarded to the Director with reference to permits should be addressed:


**PART 10.22—LEGAL ENFORCEMENT DISTRICTS**

Service law enforcement districts and their areas of jurisdiction follow. Mail should be addressed: "Special Agent in Charge, U.S. Fish and Wildlife Service. (appropriate address below)"

<table>
<thead>
<tr>
<th>Area of Jurisdiction</th>
<th>Address of District Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>819 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Idaho</td>
<td>1240 Wilson St., Boise, Idaho 83702 (208-334-</td>
</tr>
<tr>
<td>California and Nevada</td>
<td>2800 Cottage Way, Sacramento, Calif. 95816 (916-447-4748)</td>
</tr>
<tr>
<td>Colorado, Montana, Utah, and</td>
<td>P.O. Box 25886, Denver Federal Center, Denver,</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Colo. 80222 (303-234-6613)</td>
</tr>
<tr>
<td>Iowa, Kansas, Missouri, Nebras</td>
<td>400 Seventh St., S.W., Washington, D.C. 20240.</td>
</tr>
<tr>
<td>North Dakota and South Dakota</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Arizona, New Mexico, Oklahom</td>
<td>2800 Cottage Way, Sacramento, Calif. 95816 (916-447-4748)</td>
</tr>
<tr>
<td>and Texas</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Illinois, Indiana, Michigan,</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Minnesota, Ohio, and Wiscon</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Arkansas, Mississippi, and L</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>ouisiana</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Alabama, Florida, Georgia,</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>and Puerto Rico</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Kentucky, North Carolina, S</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>carolina, and Tennessee</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>District of Columbia, Delaw</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>are, Maryland, Pennsylvania,</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Virginia, and West Virgin</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>New Jersey and New York</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Connecticut, Maine, Massachus</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>setts, New Hampshire, Rhode</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
<tr>
<td>Island, and Vermont.</td>
<td>813 D St., Anchorage, Alaska 99501 (907-278-</td>
</tr>
</tbody>
</table>

**FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977**
DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
[9 CFR Parts 317, 318, and 319]

MILK ALBUMINATE
Use in Certain Sausage Products; Proposed Rulemaking

Purpose: The purpose of this document is to propose regulations for the use of milk albuminate in certain sausage products.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Animal and Plant Health Inspection Service of the Department of Agriculture is considering amendments to Parts 317, 318, and 319 of the meat inspection regulations (9 CFR Parts 317, 318, and 319), under the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), pursuant to a petition by the First Spice Mixing Company, Inc., Long Island City, New York, to permit the use of a specific, milk-based albuminate in certain sausage products.

Statement of Considerations. The proposed amendment is in response to a request by the above-named petitioner that milk albuminate be considered for use in certain sausages on the same basis as the presently approved binders listed in section 319.140 of this subchapter. Such albuminates would be permitted in an amount not exceeding 3.5 percent of the finished product weight when used individually or collectively with other binders already approved for such products.

Use of this substance in certain sausage products would enhance the nutritional characteristics of the finished product by providing the following additional characteristics:

- Albumin protein: 14-24 percent
- Casein protein: 7-29 percent
- Minerals: 6-22 percent
- Moisture: 6-22 percent
- Fat: 6-22 percent
- pH: 6.8-8.3

Milk albuminates which do not meet the above-stated lactose and protein specifications would not be accepted for use in sausage products. This requirement appears to be necessary for purposes of control and detection of milk albuminates that contain excessive lactose and because the desired textural effect imparted to products by the binder material is unlikely to be achieved unless the binder material conforms to such specifications. The Department has advised that reliable chemical testing procedures have been developed which can be utilized to determine that products are being prepared in conformity with the above specifications.

According to the specifications presented by the petitioner, the amount of milk protein in the albuminate bears a predefined ratio to the amount of lactose present. Therefore, the amount of protein would be calculated and determined from analysis for lactose.

The consumer benefit from the current regulations, which permit the use of certain binders, is the development of products with greater textural differences that could be produced, thereby providing a wider range of products from which selections for purchase can be made. The Department has found that sausages containing milk albuminate cannot be statistically differentiated from similar products prepared with previously approved binders at the same level of use; hence, it appears that the consumer benefit would be preserved and extended through the use of milk albuminates in sausage products.

The petitioner requests that milk albuminates, meeting the specifications set forth herein, be permitted in certain sausages on the same basis as other binders. To accommodate such a request, the Department is considering amendments providing for the use of milk albuminates in sausage products.

§ 317.8 [Amended]
1. Section 317.8(b)(16) (9 CFR 317.8 (b)(16)) would be amended by inserting “milk albuminate” immediately following the words “nonfat dry milk” (in the early portion of the subparagraph), and the phrase “Milk Albuminate Added” would be inserted immediately after the phrase “Nonfat Dry Milk Added” (occurring in latter portion of the paragraph).
2. The chart in § 317.7(c) (4) (9 CFR 317.7(c) (4)) would be amended by inserting the information set forth below in the class of substance “Binders” and immediately following “Isolated Soy Protein.”

§ 319.7 Approval of substances for use in the preparation of products.

<table>
<thead>
<tr>
<th>Class of substance</th>
<th>Substance</th>
<th>Product</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Milk albuminate comply complete with § 318.7(d)(3).</td>
<td>Sausage, as provided for 2.5 lb based on weight of finished product.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inedible disintegrated Substance, as provided for in § 318.7(g)(1).</td>
<td>Inedible substance for purposes of determining the type and composition of the finished products.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inedible disintegrated Substance, as provided for in § 318.7(g)(1).</td>
<td>Inedible substance for purposes of determining the type and composition of the finished products.</td>
<td></td>
</tr>
</tbody>
</table>

3. Section 319.7 (9 CFR 319.7) would be amended by adding a new paragraph (d)(3) to read as follows:

(d) * * *

(3) Milk albuminate intended for use in meat products, as provided for in § 318.7(c) (4) of this subchapter, shall contain from 38 to 62 percent of lactose hydrate, and 35 to 35 percent of protein (albumin and casein) and a ratio of lactose hydrate to total protein of 5:2; and shall have the percentage of protein prominently shown on the container label in close proximity to the product name when it enters the official establishment. Such labeling shall be maintained during storage and until the product is used in meat food products.

§ 319.140 [Amended]
4. Section 319.140 (9 CFR 319.140) would be amended by inserting “milk albuminate,” immediately following the reference to “nonfat dry milk.”

§ 319.180 (Amended)
5. Section 319.180(e) (9 CFR 319.180 (e)) and § 319.181 (9 CFR 319.181) would be amended by adding “milk albuminate” immediately after “nonfat dry milk.”
SMALL BUSINESS ADMINISTRATION

PROPOSED RULES

The Meat and Poultry Inspection Advisory Committee will be consulted, as provided in section 7 of the Act, prior to any final decision. The Federal Food, Drug, and Cosmetic Administrators will also be consulted during this period.

Any person wishing to submit written data, views, or arguments concerning the proposed amendments may do so by filing them, in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, or if the material is deemed to be confidential, with the Product Labels, Packaging, and Standards Staff, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, by May 16, 1977.

Any person desiring opportunity for oral presentation of views should address such request to the Staff identified in the preceding paragraph, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential.

If it is determined that a proper showing has been made in support of the request, the material will be kept confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be kept confidential (7 CFR 1.27(c)). Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

The Animal and Plant Health Inspection Service 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.

Done at Washington, D.C., on February 8, 1977.

P. J. Mulvehill
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 77-4622 Filed 2-14-77; 8:45 am]

SMALL BUSINESS ADMINISTRATION

PROPOSED RULES

HANDICAPPED ASSISTANCE LOANS AND BUSINESS LOANS

Increase of Borrower's Ceiling

Notice is hereby given that pursuant to the authority contained in section 118.31(a)(2) of the Act, and the procedures prescribed in section 7 of the Act, prior to the date specified in the preceding paragraph, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential.

If it is determined that a proper showing has been made in support of the request, the material will be kept confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be kept confidential (7 CFR 1.27(c)). Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

The Animal and Plant Health Inspection Service 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.

Done at Washington, D.C., on February 8, 1977.

P. J. Mulvehill
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 77-4622 Filed 2-14-77; 8:45 am]
§ 121.3-9 Definition of small business for sales of Government property.

(c) In determining, for the purpose of §§ 121.3-8(a), and 121.3-8(b), the industry into which a bidder (including its affiliates) is primarily engaged, consideration shall be given to those criteria, among others: Distribution among such industries of receipts, employment, and costs of doing business.

Interested parties may file with the Small Business Administration, on or before March 17, 1977, written statements of facts, opinions, or arguments concerning the proposal.

All correspondence shall be addressed to:

William L. Pellington, Director, Size Standards Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Business.)


M. P. Kobelinski,
Administrator.

[FR Doc. 77-4759 Filed 2-14-77; 8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 313]

IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Supplemental Notice of Proposed Rulemaking


By letter, dated January 28, 1977, the Federal Energy Administration (FEA) requested an extension of the filing date to allow an additional 30 days for comments. It states that it intends to prepare a statement addressing all aspects of the proposed proceeding. The completion of this statement, FEA states, requires that FEA have sufficient time to review and evaluate the Board’s third report to Congress in response to section 382(a) (3) of EPSCA. The proposed rulemaking stated that this report was to be filed on December 22, 1976; however, the report was submitted on February 4, 1977.

No previous extension of time has been granted in this proceeding, and it does not appear that the grant of the requested 30-day extension would prejudice any party to this proceeding. In the interest of receiving the views of all interested persons, the undersigned finds that good cause has been shown for an extension of time for filing comments.

Accordingly, pursuant to authority delegated in § 85.20(d) of the Board’s Organization Regulations (14 CFR 85.20(d)), the undersigned hereby extends the time for filing comments to March 16, 1977.


SIMON J. ELLENBERG
Associate General Counsel, Rules Division.

[FR Doc. 77-4781 Filed 2-14-77: 8:45 am]

[14 CFR Part 309]

STATEMENTS OF GENERAL POLICY

Supplemental Notice of Proposed Rulemaking

By Notice of Proposed Rulemaking PSDR-45, 41 FR 25268, December 1, 1976, the Civil Aeronautics Board gave notice that it was proposing to amend Part 309 of the regulations so as to delineate standards for determining priorities of hearing with respect to competing applications for operating authority. The Board requested that interested parties file comments on or before January 17, 1977. The due date for filing comments was later extended to February 16, 1977, 42 FR 31800, January 17, 1977.

By letter dated February 4, 1977, counsel for the local service carriers requested a further extension of the due date for filing comments. The reason for the request is that the separate statement of Board Members Minetti and West on route hearing priorities was not received until February 2, 1977. Accordingly, counsel for the local service carriers requests that the due date for filing comments be extended until February 28, 1977.

In the interest of receiving the views of all interested persons, the undersigned finds that good cause has been shown for an extension of time for filing comments.

Accordingly, pursuant to authority delegated in § 85.20(d) of the Board’s Organization Regulations (14 CFR 85.20(d)), the undersigned hereby extends the time for filing comments to February 28, 1977.

(Secs. 101, 204, 401, and 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737 (as amended), 745, 794 (as amended), 783; 49 U.S.C. 1301, 1324, 1371, and 1482.)

SIMON J. ELLENBERG
Associate General Counsel, Rules Division.

[FR Doc. 77-4780 Filed 2-14-77: 8:45 am]
PROPOSED RULES

be closed to the public to permit its being microfilmed. The record is now available for public inspection and use at the Public Reference Branch, Room 136, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Comment will be accepted on both the report of the presiding officer (see 41 FR 47267 (October 28, 1976) and the staff report (42 FR 1483 (January 7, 1977)) for a period of 60 days ending on April 18, 1977. Comments should be identified as "Comment on Presiding Officer and Staff Reports—Vocational School TRR," and addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and submitted, when feasible and not burdensome, in five copies.


JOHN F. DUGAN, Acting Secretary.

[F.R. Doc. 77-4639 Filed 2-14r-77; 8:45 am]

FEDERAL POWER COMMISSION

[38 CFR Parts 154, 201, 260]

ACCOUNTING AND RATE TREATMENT OF ADVANCES TO SUPPLIERS FOR GAS OUTSIDE THE LOWER FORTY-EIGHT STATES

Order Terminating Proceeding


On December 29, 1972, the Commission issued a Notice of Proposed Rulemaking in Docket No. R-466 (38 FR 1055, January 8, 1973) proposing to amend its Regulations under the Natural Gas Act so as to adopt one of two alternative methods of rate and accounting treatment for advances made to producers outside the lower forty-eight states by pipelines for gas to be delivered at a future date. For the reasons discussed below, we shall terminate the proposed rulemaking in Docket No. R-466.

In the Notice we stated our intention to set guidelines for the proper treatment of advances for gas outside the lower forty-eight states, except as noted herein. We also stated that such guidelines would apply to advances made pursuant to contracts entered into on or after the date of issuance of an order vacating that portion of Order No. 499 dealing with advances, as well as pursuant to contracts entered into prior to the issuance of such order, if they would be treated the same as fully and fully advances.

A total of 26 parties responded to the notice including 9 independent producers, 3 interstate pipelines, 3 associations and 2 state commissions. Most of the respondents supported the concept of Alternative 1 (rate base treatment for advances made prior to the issuance of such order) or Alternative 2 (rate base treatment for advances made after the issuance of such order). The respondents had determined that the base treatment for such advances would not be in the public interest.

Our decision to terminate the instant rulemaking proceeding is also consistent with the Commission’s action terminating Commission’s action terminates.

With respect to advances to producers in areas in the North American Continent (other than Alaska, Canada and the lower forty-eight states), the Commission has determined that rate base treatment for such advances would not be in the public interest.

During the period since the issuance of the Notice of Proposed Rulemaking in this proceeding, the Commission has had several opportunities, on a case-by-case basis, to deal with the issue of rate base treatment for Canadian advance payments. During that period the Commission has concluded that rate base treatment for Canadian advance payments is not in the public interest because there is no assurance that any advances would be forthcoming to consumers of natural gas within the United States. Accordingly, the Commission shall not, by way of this rulemaking, authorize the inclusion of Canadian advance payments in rate base.

The portion of this rulemaking covering Alaskan advance payments was, in effect, severed from this docket in Docket No. RM74-4, wherein the Commission in Order No. 499 permitted rate base treatment for Alaskan advances, subject to conditions. However, in the Commission’s December 31, 1975 order, reissue (1976), FPC, 52, 1717, the Commission vacated that portion of Order No. 499 and ordered refunds. Thus, no further discussion of that issue is required in this order.


3 Reh. denied, FPC, issued February 27, 1976.

4 FPC, issued February 27, 1976, reh. granted, FPC, reconsideration, FPC, issued April 22, 1976.

5 On December 31, 1975, the Commission also issued an order in Docket No. RP76-49 which required all pipelines which had made Alaskan advances pursuant to pre-Order 499 contracts to show cause why these Alaskan advances should not be treated similarly to Order No. 499 Alaskan advances. No further action has been taken in that proceeding.
PROPOSED RULES

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 808 ]

[ Docket No. 782-P0844 ]

MEDICAL DEVICES

Proposed Action on State of California Application for Exemption from Preemption of Requirements

The Food and Drug Administration (FDA) proposes to grant the application of the State of California Department of Health for exemption from Federal preemption for certain California State laws and regulations pertaining to medical devices.

The proposal would amend Title 21 of the Code of Federal Regulations by adding new § 808.55 to set forth FDA action on the California application for exemption from Federal preemption. The Commissioner of Food and Drugs believe that the amendment become effective immediately upon publication of a final regulation. Comments on this proposal may be submitted on or before April 18, 1977.

The Medical Device Amendments of 1976 (Pub. L. 94-295), amending the Federal Food, Drug, and Cosmetic Act (hereinafter referred to as "the act"), became law on May 28, 1976. Section 521 (a) of the act (21 U.S.C. 360k(a)) prohibits any State or political subdivision of a State from enacting or enforcing any law which relates to the safety or effectiveness of a device or to any other matter included in a requirement applicable to the device under the act. Section 521(b) of the act sets forth specific conditions under which an exemptor may permit a State or local government to establish, or continue in effect, device requirements that would otherwise be preempted.

SUMMARY OF STATUTORY REQUIREMENTS

The Commissioner believes that Congress intended that all requirements of State and political subdivisions of a State that deal specifically with the inherent safety or effectiveness of particular medical devices and that are different from or in addition to FDA requirements applicable to the device would be preempted upon enactment of the Medical Device Amendments of 1976 on May 28, 1976. This conclusion is based on the general congressional concern that numerous different and often conflicting requirements applicable to a medical device imposed by jurisdictions other than the Federal government could unduly burden interstate commerce and further indicated that Congress was aware of the possible preemption of State and local government requirement that should be authorized to be continued, if an application were submitted that met the requirements of the act (House Report No. 94-853, p. 48).

Section 521(b) of the act sets forth general procedures to be followed in processing applications from State or local governments seeking exemptions from preemption. The Commissioner is required to publish his action on the State or local government application in the Federal Register as a proposed regulation, providing an opportunity for interested persons to request an oral hearing and, as required by the Administrative Procedure Act, 5 U.S.C. 553, to provide a comment period. The notice of opportunity for an oral hearing is published elsewhere in this issue of the Federal Register.

Since FDA has determined that a 60-day comment period is reasonable for the submission of comments on proposed regulations generally, the Commissioner believes it is appropriate to provide a 60-day comment period for this proposal on the State of California application for exemption from preemption.

The Commissioner is aware of the need to provide guidance to State and local governments on preparing and submitting applications for exemption from preemption. Under section 521(b) of the act. Therefore, the Commissioner will propose in the near future procedural regulations which are to be followed by State and local governments in submitting applications for exemption under section 521(b) of the act.

CALIFORNIA APPLICATION FOR EXEMPTION FROM PREEMPTION

On July 20, 1976, the California Department of Health submitted an application for exemption of California medi-

enforcement provisions such as requirements that State inspection be permitted of factory records concerning all devices, registration and licensing requirements for manufacturers and others, and prohibitions of manufacture of devices in violation of (b) the act, and of manufacture of adulterated or misbranded devices.

2. Health and Safety Code, Chapter 2, Sections 520 and 521, Regulations Pertaining to Medical Devices. These regulations deal primarily with delegations of authority and responsibility for enforcing State health laws that can affect medical devices.

The Commissioner finds that delegations of authority and responsibility for enforcing State health laws are matters relevant to administrative enforcement of local law and are not requirements with respect to devices within the meaning of section 521 of the act. Therefore, the Health and Safety Code general provisions are not preempted by section 521(a) of the act.

3. California Administrative Code, Title 8—Drugs and Devices Regulations under Title 17, Article 2, Drugs and Devices Regulations under Title 17. These regulations set forth State policies and requirements for medical device labeling, license fees, misbranding, products for diagnosis of cancer, exemption for prescription devices, unlicensed establishments and of manufacture and premarket clearance for medical devices.

The Commissioner finds that most provisions of the California Sherman Food, Drug, and Cosmetic Law are in addition to, or different from, current Federal requirements. Some of Title 17 regulations submitted for review are substantially identical to Federal requirements while others are in current Federal requirements. In all cases these additional or different requirements are more stringent than, present Federal requirements and are therefore either not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act. Consequently, the additional, more stringent provisions of Article 2, Title 17, should be permitted to continue, at least until the Federal requirements are implemented, to enable the State of California to continue important public health programs and to enable FDA to benefit from additional information concerning regulated devices.

4. Laws governing diagnosis and treatment of cancer and two implementing regulations under Title 17. California laws which have as their purpose the effective diagnosis, care, treatment or relief of persons suffering from cancer are as follows:

a. Section 2378.5, Division 1, Chapter 5, Article 13 of the Business and Professions Code deals with the regulation of cancer clinics and hospitals. This section is not preempted by section 521(a) of the act because it does not impose requirements applicable to devices within the meaning of section 521 of the act.

b. Sections 3700 through 3721, Division 2, Chapter 7 of the Health and Safety Code are consistent with Federal requirements and therefore either are not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act to enable important public health programs to continue.

5. Draft regulations on intrauterine devices, under Title 19, are not preempted by section 521(a) of the act because they are not among the laws preempted under section 521(b) of the act. Procedural regulations governing the submission and content of applications under section 521(b) of the act will provide additional guidance on this subject.

The Commissioner finds that sections 1700 through 1721, Division 2, Chapter 7 of the Health and Safety Code are consistent with Federal requirements and therefore either are not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act to enable important public health programs to continue.

6. Draft regulations on inpatient hospitals, under Title 19, are not preempted by section 521(a) of the act because they are not among the laws preempted under section 521(b) of the act. Procedural regulations governing the submission and content of applications under section 521(b) of the act will provide additional guidance on this subject.

The Commissioner finds that sections 1700 through 1721, Division 2, Chapter 7 of the Health and Safety Code are consistent with Federal requirements and therefore either are not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act to enable important public health programs to continue.

7. Draft regulations on nuclear medicine, under Title 19, are not preempted by section 521(a) of the act because they are not among the laws preempted under section 521(b) of the act. Procedural regulations governing the submission and content of applications under section 521(b) of the act will provide additional guidance on this subject.

The Commissioner finds that sections 1700 through 1721, Division 2, Chapter 7 of the Health and Safety Code are consistent with Federal requirements and therefore either are not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act to enable important public health programs to continue.

8. Draft regulations on radiation safety, under Title 19, are not preempted by section 521(a) of the act because they are not among the laws preempted under section 521(b) of the act. Procedural regulations governing the submission and content of applications under section 521(b) of the act will provide additional guidance on this subject.

The Commissioner finds that sections 1700 through 1721, Division 2, Chapter 7 of the Health and Safety Code are consistent with Federal requirements and therefore either are not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act to enable important public health programs to continue.
The Commissioner finds that these draft regulations do not have the force and effect of law in California, are therefore not a “requirement” within the meaning of section 521 of the act, and are preempted by section 521(a) of the act. The Commissioner recommends that California review the final Federal regulation on IUD labeling requirements that were published in the FEDERAL REGISTER in the near future before publishing its draft regulations in final form and before applying for an exemption from Federal preemption.

Section 2541.3 of the Business and Professions Code establishes authority for the licensing of manufacturers, packers, and distributors of prescription ophthalmic devices that do not meet the standards. The Commissioner finds that this legislation, because it is pending in the California legislature, has no force and effect of law and is not a “requirement” within the meaning of section 521(a) of the act. The Commissioner therefore finds that it would be premature to review this application for an exemption from preemption under section 521(b) of the act. The Commissioner believes it generally desirable that State and Federal regulations develop requirements for labeling of hearing aids and the conditions of their use that are consistent with FDA requirements. He therefore recommends that California review the proposed Federal regulations pertaining to requirements for hearing aid labeling and conditions for sale which appear elsewhere in this issue of the FEDERAL REGISTER, before enacting pending legislation. The Commissioner notes that certain State and local requirements concerning hearing aids that are in addition to FDA requirements will not be affected by section 521 of the act to the extent that they pertain to licensing of health professionals and related occupations.

8. An order amending section 13576 of Title 17 of the California Administrative Code increases the annual State licensing fee for device manufacturers to $200. The Commissioner does not believe that section 521(a) of the act was intended to include State fee requirements for business establishments as requirements applicable to devices within the meaning of section 521 of the act. Accordingly, he does not regard amended section 10376 of the California Welfare and Institutions Code as preempted by section 521(a) of the act.

9. Senate Bill No. 86, dated July 12, 1975, pending legislation on hearing aids, concerns the pending legislation. The Commissioner believes that certain State and local requirements concerning hearing aids that are in addition to FDA requirements will not be affected by section 521 of the act to the extent that they pertain to licensing of health professionals and related occupations.
pressed in that notice with respect to persons qualified to receive and use acupuncture devices is still in effect. Therefore, it is possible that FDA may take enforcement action where acupuncture devices are received and used for personal use by the agency regards as unqualified under its March 9, 1973 notice, notwithstanding that the person may be licensed or certified to practice acupuncture under State law. These devices may also be subject to future Federal requirements pertaining to exemptions for investigational use of devices under section 520 (g) of the act, restricted use requirements under section 520 (c) of the act, and other Federal requirements that may take precedence over California law.

**Effective Date**

The final regulations will be published in the Federal Register after consideration of all comments submitted in response to the proposed action and views presented at any oral hearing that may be granted. Because the regulations proposed below would be rules granting or recognizing exemptions to, or relieving restrictions upon, the State of California, the regulations do not require a delayed effective date. Accordingly, the Commissioner is proposing that the final regulations become effective upon their date of publication in the Federal Register.

The Commissioner has carefully considered the environmental effects of the proposed regulations and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required.

A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 521, 701, 52 Stat. 1055-1056 as amended, 99 Stat. 574 (21 U.S.C. 360k, 371) ), it is proposed that Chapter 1 of Title 21 of the Code of Federal Regulations be amended by adding new Part 808, consisting at this time of § 808.55, to read as follows:

**PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS**

Subpart A—[Reserved]

Subpart B—Listing of Specific State and Local Medical Device Requirements

§ 808.55 California.

(a) The following California medical device requirements are preempts, notwithstanding section 521 of the Federal Food, Drug, and Cosmetic Act, either because they are not preempted by section 521 (a) or because the Commissioner of Food and Drugs has granted an exemption from preemption pursuant to section 521 (b) of the act:

3. California Administrative Code, Article 2—Drugs and Devices Regulations under Title 17.
4. Business and Professions Code, Division 1—Chapter 5, Article 13, Section 2378.5 (Diagnosis and Treatment of Cancer).
5. Health and Safety Code, Sections 1700 through 1721, Division 3, Chapter 7 (Diagnosis and Treatment of Cancer).
6. California Administrative Code, Title 17, Chapter 5, Subchapter 2, Article 1, Sections 10490.2 and 10490.6 (Bolen Test and Antihemolact Test).
7. Business and Professions Code, Section 2541.3 pertaining to prescription ophthalmic devices except those requirements that are inconsistent with § 801.410 (c) of this chapter.
8. Business and Professions Code, Section 2541.6 (State contract specification for prescription ophthalmic devices).
11. California Administrative Code, Title 17, amended Section 10376 (Licensing Fees for Device Manufacturers).
12. Senate Bill No. 86, dated July 12, 1976, Chapter 5, Division 2, Business and Professions Code (Practice of Acupuncture).

(b) The following California medical device requirement has been preempted: Business and Professions Code, Section 2541.3, to the extent that the section states requirements that are inconsistent with the requirements of § 801.410 (c) of this chapter.

Interested persons may, on or before April 18, 1977, submit to the hearing Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments (permitted in a 14-point typeface) identifying with the hearing Hearing Clerk, Food and Drug Administration.


SHERWIN GARDNER
Acting Commissioner of Food and Drugs.
PROPOSED RULES

and Submittal of Implementation Plans, and particularly 40 CFR 51.18.

This notice is to advise the public of the receipt of this proposal and to request public comments. Copies of the proposed revisions are available for public inspection during regular business hours at:

Environmental Protection Agency, Region IX, Enforcement Division, 100 California Street, San Francisco, CA 94111.

State of California, Air Resources Board, 7600 11th Street, Sacramento, CA 95814.

Monterey Bay Unified APCD, 1270 Natividad Road, Salinas, CA 93901.


Interested persons may participate in the rulemaking process by submitting written comments to Regional Administrator, Attention: Enforcement Division, EPA, Region IX, 100 California Street, San Francisco, California 94111. Relevant comments received on or before March 17, 1977 will be considered. Comments received will be available for inspection during normal working hours at the Region IX office and at the EPA Public Information Reference Unit.

This notice is issued under the authority of Section 110 of the Clean Air Act, as amended (42 U.S.C. 1857e-5).


PAUL DE PALCO, JR., Regional Administrator.

[FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 90]

CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Extension of Comment Period on Proposed Rulemaking

On January 14, 1977, a Notice of Proposed Rulemaking was published in the Federal Register (42 FR 2981), concerning proposed amendments to 29 CFR Part 90, the regulations pertaining to certification of eligibility to apply for worker adjustment assistance pursuant to Sections 231-235 of the Trade Act of 1974 (19 U.S.C. 2271-2322). The Notice invited interested persons to submit written comments regarding the proposed amendments on or before February 10, 1977. On February 7, 1977, a correction notice was published in the Federal Register (42 FR 5372) inviting the written submission of comments on or before February 14, 1977.

On the basis of a request for additional time, I hereby extend the period for public comment by 30 days until March 16, 1977. Accordingly, any interested person may submit comments concerning the proposed amendments on or before March 16, 1977 to the Director, Office of Trade Adjustment Assistance, Room N-3603(a), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed this 9th day of February 1977,

HERBERT N. BLACKMAN,
Acting Deputy Under Secretary.

[FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

[29 CFR Part 1910]

[Docket No. H-064]

PROPOSED STANDARD FOR EXPOSURE TO LEAD

Availability of Technological Feasibility and Economic Impact Study; Certification of Economic Impact; and Identification of Additional Studies

The Occupational Safety and Health Administration (OSHA) published in the Federal Register on October 3, 1975 (40 FR 45934) a proposed standard for exposure to lead. On January 4, 1977, OSHA announced in the Federal Register (42 FR 6868) the availability of a preliminary lead standard and an inflationary impact study for the proposed lead standard. The notice invited public comment on these matters as well as several specific factual issues and scheduled an informal rulemaking hearing on all relevant issues relating to the proposed standard, including its economic impact. The hearing will begin on March 15, 1977, at 9:00 a.m. in the Departmental Auditorium on Constitution Avenue between 12th and 14th Streets, N.W., Washington, D.C.

When the availability of this preliminary standard was announced, it was also stated that a final study, based on the supplemental data collection effort by D.B. Associates of Salt Lake City, Utah, would be made available at least four weeks prior to the hearing public hearing. That study is now available for public inspection and copying at the following address: Technical Data Center, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3620, Third and Constitution Avenue, N.W., Washington, D.C. 20210 (Telephone: 202-253-8076). OSHA hereby certifies that the economic impacts of the proposed lead standard have been carefully evaluated pursuant to section (6)(b) of the Act and in accordance with Executive Order 11921, as amended by Executive Order 11940 (42 FR 1017, January 5, 1977).

The notice published January 4, 1977 (42 FR 6868), invited interested parties to submit information, comments and data on the issue of economic feasibility of the proposed and any other issue raised by the preliminary study, including:

(1) Cost impact on consumers, businesses, markets, or Federal, State or local government; (2) Effect on productivity of wage earners, businesses (both small and large) or government; (3) Effect on competition; (4) Effect on imports and exports; (5) Effect on supplies of important materials, products or services; (6) Effect on employment; (7) Ability of specific industries to absorb costs of compliance; and (8) Effect on energy supply or demand.

The notice also indicated that persons wishing to testify at the hearing must submit by February 11 a written notice of their intention to appear as well as any pertinent materials. A 72-hour advance notice of hearing which includes a statement of position and of the evidence to be adduced at the hearing to support that position must be provided to the interested parties at least 30 days before the hearing.

Interested persons, may participate in the rulemaking process by submitting written comments to Regional Administrator, OSHA, 3rd and Constitution Avenue, N.W., Washington, D.C. 20210.

Interested persons, may participate in the rulemaking process by submitting written comments to Regional Administrator, OSHA, 3rd and Constitution Avenue, N.W., Washington, D.C. 20210.

We are now inviting comments on the above issues, and on the issue of benefits to be derived from implementation of the proposed standard, as these comments relate to analysis of this final economic study. With respect to this limited area, interested persons who have submitted notices of appearance and intend to present evidence at the hearing concerning this economic study must submit a detailed statement of position and the basis therefor, in quadruplicate to the Docket Office, Room N-3620, Third and Constitution Avenue, N.W., Washington, D.C. 20210 (Telephone: 202-523-8076). OSHA hereby extends the period for the receipt of comments on or before March 11, 1977.

This requirement also applies to interested parties who have not yet submitted notices of appearance but wish to appear at the hearing to discuss only the final economic impact study. Their notices of intention to appear as well as their detailed statement of position must be received by March 11, 1977. Interested persons who are not appearing at the hearing or do not intend to present evidence may submit comments and data on the issue of economic feasibility of the proposal and any other issue raised by the preliminary study, including:

(1) Cost impact on consumers, businesses, markets, or Federal, State or local government; (2) Effect on productivity of wage earners, businesses (both small and large) or government; (3) Effect on competition; (4) Effect on imports and exports; (5) Effect on supplies of important materials, products or services; (6) Effect on employment; (7) Ability of specific industries to absorb costs of compliance; and (8) Effect on energy supply or demand.
clearly identify the portion of the study addressed and the position taken with regard to each issue therein. The data, views and arguments that are submitted shall be available for public inspection and copying at the above address. All timely written submissions received shall be made a part of the record of this proceeding.

Additional studies. Since publication of the notice of January 4, 1977, OSHA has identified further studies and reports not listed therein or in the proposal that may be significant. These studies may be discussed at the March 15, 1977, rulemaking hearing and will be part of the record on which the final standard will be based. In order to alert interested parties to these studies and reports at the earliest possible time, a list of the new material is provided below:


Note.—It is hereby certified that the economic impacts of this proposed regulation have been evaluated in accordance with Executive Order 11821, as amended by Executive Order 11949.

Signed at Washington, D.C. this 14th day of February, 1977.

B. M. CONCKLIN,
Acting Assistant Secretary of Labor.
DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation
1976 CROP LOAN COTTON

Final Date of Redemption and Acquisition

All outstanding loans on cotton under Commodity Credit Corporation's (CCC) 1976 Cotton Loan Program mature and are due and payable on the last day of the tenth calendar month from the first day of the month in which the loan (or advance) was made, unless CCC makes cotton for payment at an earlier date. If the maturity date falls on a non-workday for county offices, the date of maturity shall be the next workday. Notice is hereby given that if the borrower or a purchaser of his equity does not redeem the cotton securing any outstanding loan on or before the close of business on the date of maturity and if CCC has not made demand for payment at an earlier date, CCC will, pursuant to the provisions of the loan agreement covering such loan, acquire title to such cotton at the close of business on the maturity date, and title thereto shall, without a sale thereof vest in CCC at that time: Provided, That CCC will not acquire title to such cotton if repayment has been mailed to the county ASCS office by letter postmarked (not patron postage meter date stamped) not later than the maturity date. As provided in the loan agreement, CCC will not pay for any market value which the cotton may have in excess of the loan value plus applicable charges and interest. If warehouse receipts representing any such cotton are sent to a local bank at the request of the producer or a purchaser of his equity, the loan value of the cotton plus charges and interest, must be received by the local bank not later than the close of business on the maturity date.

In the event a producer has made a fraudulent representation in the loan documents or in obtaining the loan, the producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton securing the loan as of the date title vests in CCC, as determined by CCC. In the event a person who has filed a Form CCC-813 with a county ASCS office fails to redeem the cotton covered by the Form CCC-813, CCC may elect to purchase the cotton on the maturity date and such person shall be liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the maturity date, as determined by CCC.

Effective date. This notice takes effect on February 15, 1977.

VICTOR A. SIEGLE,
Acting Executive Vice President,
Commodity Credit Corporation.

Forest Service
FINAL 1976 COOPERATIVE WESTERN SPRUCE BUDWORM PEST MANAGEMENT PLAN

Availibility of Draft Environmental Statement Addendum

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a Draft Environmental Statement Addendum for control of the western spruce budworm in Oregon and Washington, USDA-PS. R4-DES-Acm-76-7. The Environmental Statement Addendum concerns the possible treatment of western spruce budworm on 670,380 acres of infested Federal, State, and private lands in Oregon and Washington during the spring and summer of 1977 with carbaryl to suppress the western spruce budworm.

This Draft Environmental Statement Addendum was transmitted to CEQ on February 7, 1977.

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

USDA, Forest Service, South Agriculture Bldg., Room 3210, 12th St. & Independence Ave., S.W., Washington, D.C. 20250.
USDA, Forest Service, Pacific Northwest Region, 319 S.W. Pine Street, Portland, Oregon 97204.
Okanogan National Forest, 219 Second Avenue North, Omak, Washington 98840.
Bureau of Indian Affairs, 1425 N.E. Irving Street, Portland, Oregon 97229.
Washington State Department of Natural Resources, Public Lands Building Room 301, Olympia, Washington 98504.

A limited number of single copies are available upon request to Regional Forester, T. A. Schlapfer, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

Copies of the Draft Environmental Statement Addendum have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public and from the State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the action alternatives and requests for additional information should be addressed to Regional Forester, T. A. Schlapfer, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208. Comments must be received April 8, 1977 in order to be considered in the preparation of the final Environmental Statement Addendum.

CURTIS L. SWANSON,
Regional Environmental Coordinator, Planning, Programming, and Budgeting.

Rural Electrification Administration
MINNKOTA POWER COOPERATIVE, INC.
Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with certain Federal approvals, required by Minnkota Power Cooperative, Inc., 303 Grand Forks, North Dakota 58201, to provide a new generation facility.

The proposed generating facility consists of one 30 MW combustion turbine to be constructed in Beltrami County near Shooks, Minnesota.

Interested persons are invited to submit comments which may be helpful in preparing the Draft Environmental Impact Statement.

Comments should be forwarded to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated at Washington, D.C., this 10th day of February 1977.

DAVID A. HAML, Administrator.
Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of February, 1977.

Pursuant to Title 49 of the U.S. Code, as amended, the Board finds that Glens Falls has not provided the community with a commuter replacement service at that point. As discussed in greater detail below, the foregoing authorization and approval were made in accordance with the Board’s decision in the Service to Glens Falls Case, wherein the Board, after denying Allegheny’s request to delete the community, found that the public interest required a one-year test of the community’s ability to generate traffic sufficient to make available local service. Allegheny commuter service commenced at Glens Falls on December 1, 1975.

Allegheny has now filed an application in Docket 29627 to delete Glens Falls as a separate point on its Route 78, and a petition therein for Board action on its application by show cause procedures. In support of its application, Allegheny asserts that commuter replacement service at Glens Falls has been a failure. Specifically, it maintains that the community has made little use of the commuter facilities that have been made available in the past, and that substantial losses in providing the service: and that “the losses Allegheny is sustaining cannot be justified in terms of the de minimis public benefits the service may properly be said to have been producing.”

The history of certificated air service to Glens Falls, including Allegheny’s pre-existing efforts to seek deletion of the community, is documented in the original Glens Falls Case, supra. The Board has tentatively determined that there is no need for further evidentiary hearings in this proceeding. A substantial evidentiary record has already been developed in the Glens Falls Case, supra. The Board has not been provided with additonal evidentiary material since the Board’s decision in that proceeding. Through the Warren County Airport. In connection with Docket 29627, Allegheny has submitted detailed evidentiary material in support of its contentions.

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The County of Warren, N.Y. has filed a conciliatory answer to Allegheny’s application and petition, in which the County requests that Allegheny’s application and petition be denied, or, alternatively, that “public hearings be held on all issues which may properly be said to have been produced.” In support of its position, the County maintains that Allegheny has not provided the community with a fair test of its traffic generating potential as required by the Board. It also argues that a number of other important considerations warrant denial of Allegheny’s requests, including the contribution that certificated service makes to the development of the Warren County area, the investment that the community has made in the development of the local airport, and the inconvenience that the community would experience if certificated air service were terminated at Glens Falls.

The Board is of the opinion that the proposed experiment with certificated air service at Glens Falls shows that Glens Falls has not generated—and is unlikely to generate—traffic sufficient to permit economic operations in response to service well attuned to its needs. Furthermore, the record in the Service to Glens Falls Case, as well as additional evidentiary material submitted by both parties, indicates that the community’s air transportation requirements can be readily served through the existing facilities at Glens Falls, N.Y. Accordingly, consistent with Board procedures, we tentatively find that the public convenience and necessity require termination of Allegheny’s certificate responsibilities at Glens Falls, N.Y.

We have also determined that there is no need for further evidentiary hearings in this proceeding. A substantial evidentiary record has already been developed in the Service to Glens Falls Case, supra. The Board has not been provided with additional evidentiary material since the Board’s decision in that proceeding. Through the Warren County Airport. In connection with Docket 29627, Allegheny has submitted detailed evidentiary material in support of its contentions.

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the coming year’s operations; establish that
Glens Falls service cannot be operated on an
economic basis or that continued service to
Glens Falls results in an unwise allocation
of transportation resources.

In response to the Board’s Service to
Glens Falls decision, Allegheny subsequently
applied for approval of an agreement
between Allegheny and Air North
providing for Allegheny Commuter service
between Glens Falls and Albany to be
operated by Air North. The agreement
afforded Glens Falls essentially the same
type of Allegheny Commuter service pro-
vided to the New York area. However, Air North
arrangement Allegheny retained all rev-
enues generated by the Glens Falls
service.

As noted above, by Order 75-11-42, the
Board approved the agreement between
the carriers and authorized Allegheny to
suspend service at Glens Falls for a
period of one year, subject to the pro-
vision of Glens Falls-Albany replacement service by Air North. By the
terms of the order, Air North was
required to provide at least two daily
Glens Falls-Albany round trips, of which
“at least one morning flight and one
evening flight in each direction must
provide reasonable connections with Al-
legheny’s Albany-New York flights.”

Air North began providing Glens Falls
with Air North only commuter service on
December 1, 1975. Appendix A summarizes
Air North’s commuter operations, includ-
ing the number of Glens Falls departures
scheduled and operated and the perform-
ance of the service. The next section
outlines the Air North’s schedule on
Glens Falls schedule. Appendix B outlines the
costs of the commuter service
Glens Falls during the test period.

FINDINGS AND CONCLUSIONS

1. Service. Allegheny has provided
Glens Falls with a full and fair test of
its ability to support local air service at
the Warren County Airport. As shown in
Appendix B, Air North’s initial service
pattern consisted of six southbound
and four northbound flights between Glens
Falls and Albany, well above the mini-
 mum required. On March 1, 1976, Air
North reduced its southbound service
from 6 to 5 daily flights. This pattern of
service was maintained with only minor
changes until December 31, 1976. How-
and significantly, during Glens Falls’
peak summer season. On September 16,
1976 Air North reduced service at Glens
Falls to two daily round trips. These
flights, however, continued to provide
early morning departures and late eve-
nings arrivals in both directions as re-
quired by the Board’s original decision.

It is also important to note that Air
North’s flights were scheduled to provide
reasonable connections with Allegheny’s
Albany-New York flights. As noted in
Appendix B, Air North implemented its
flight schedule and began service soon
after the Board’s decision. In the first
four months of 1976, Air North provided
the carrier’s operational performance
factor exceeded 91 percent. During the
peak summer season, the carrier achieved
a performance factor of approximately
88 percent. During the peak summer
season, the carrier achieved a performance
factor of approximately 88 percent.

Second, the survey cites to only seven
instances during the remainder of the
trial period (i.e., the second two
months of the summer travel season) where
a Glens Falls traveler was unable to obtain
a reservation for an Albany-New York
flight—and in each instance the reserva-
tion was requested on extremely short
notice, i.e., for same day or next day
departure. It should be appreciated
that travelers in many markets receiving
service from carriers with difficulty in
obtaining reservations on scheduled flights where, as here, they
have attempted to make reservations on
short notice during peak travel periods.

In short, there has been no showing that
Glens Falls travelers have experienced
undue difficulty in obtaining Glens Falls-
New York air transportation, or, equally
important, that such difficulties as may
exist have had a significant impact on
Glens Falls’ ability to support local air
service at Glens Falls. In our judgment,
there has been no showing that
Allegheny has otherwise discouraged use
of commuter service and has failed to
provide reasonably convenient single-day round-trip
service to and from New York City via
connections at Albany.

However, the community claims that
Allegheny has both discouraged the use
of commuter service and has failed to
provide reasonably usable New York City
service by making it difficult to obtain
bookings on the Albany-New York leg of
Glens Falls-New York flights. In our judgment, however,
the community’s contentions are not sup-
ported by the facts. First, there has been
no showing that Glens Falls travelers
experienced difficulty in booking Albany-
New York flights between December 25,
1975 and June 27, 1976. This is a pertinent
consideration, because, as we shall dis-

3. Traffic response and cost of provid-
   ing service. Traffic response at Glens
Falls has not been, and is not likely to
be, sufficient to permit air service on an
economic basis. As shown in Appendix D,
4,024 passengers used the service during
the first 10 months of the trial period. This figure translates into an overall average of only 6.4 enplanements per day, and less than 1.5 enplanements per departure, at Glens Falls, during the period in question. However, traffic was significantly greater during the trial period, as in the past, was greatest during the summer months. 

Moreover, since Glens Falls traffic has historically declined after the conclusion of the summer travel season, there is no reason to believe that Glens Falls traffic will increase during the remainder of the year.

On its face, the low levels of Glens Falls traffic experienced during the past year strongly suggest that Glens Falls cannot support commuter service at its own airport. This inference is confirmed by data submitted by Allegheny showing that it has sustained substantial losses in underwriting commuter service at Glens Falls. In this connection, the carrier's estimates that the commuter operation produced a cash loss of about $225,000 after the first ten months of operation—or about $47 for each Glens Falls passenger transported—and that such losses may be expected to continue to the end of the one-year trial period. Allegheny's figures also show that the commuter service produced cash losses in every month of the period, with monthly losses ranging in some cases up to a low of $104,544 in September, to a high of $39,103 in December, 1975. Allegheny also estimates that it suffered a cash loss of about $60,000 during the June-August period when, as a result of poor traffic, it was operating at its lowest levels. Warren County raises no objections to the financial estimates submitted by Allegheny.

In sum, it is clear that at no time during the test period did traffic volumes approach the levels that are required to support service at Glens Falls and, as we now discuss, in view of the attraction of alternate air transportation service, there is no basis for concluding that Glens Falls is or will ever be able to do so in the future.

3. Alternate service. Glens Falls and the surrounding area have reasonable access to the national transportation network through the neighboring airport facilities at Albany. As indicated, the Albany airport is located approximately 50 miles from Glens Falls, and can be reached by private automobile in less than an hour. Excellent ground transportation is available between Glens Falls and the Albany airport. In connection with the third point, it is significant to point out that since the issuance of the Board's decision in the Service to Glens Falls Case, limousine service has been available in the Glens Falls area affording a reasonable alternative to use of the private automobile. Furthermore, the Albany airport is classified as a medium hub airport, and American Airlines with numerous daily departures (primarily with jet equipment) and with numerous single-plane frequencies in a variety of domestic sectors services the Albany airport meets whatever need Glens Falls travelers may have for New York City service at the present time. Allegheny offers seven daily nonstop round trips, all with one-way trip and less than 1.5 enplanements per departure at Glens Falls itself on a monthly basis, and exceeded that figure in the northbound direction only during one month—August. However, in the fog, the low levels of traffic may be expected to continue to the end of the year.

Our judgment, Allegheny's dismal experience in providing reliable and satisfactory commuter service, coupled with the unavailability of alternate air transportation at Albany, provides a definitive basis for the following conclusions regarding certificated service at Glens Falls. First, if certified service were terminated, the Albany airport would readily service the air transportation needs of the Glens Falls area, and would do so without placing any undue inconvenience on area travelers. Conversely, as Allegheny argues, in view of the accessibility and proximity of the excellent Albany air service, a continuation of local service at Glens Falls will produce benefits that are unavailable at Glens Falls, compared with the costs involved, to justify a continuation of certified service at that point.

*Allegheny's exhibits show that the limousine service is well patronized. For example, during May and June 1976 the local limousine operator carried over 500 round trips between limousine service and the Albany airport, which amounted to about $50 percent of Air North's Glens Falls-Albany round trips. The limousine fare is only $12 one way, and $18 round trip, or about one-half the one-way air fare and one-third the round-trip air fare.

*OAG, No. 4, 1976.

*Allegheny's data shows that Glens Falls area travelers preferred to use the more extensive air transportation services available at the Albany airport during the commuter experiment. For example, a travel agent survey conducted by Allegheny in June, 1976 shows that notwithstanding 45 percent of Air North's Glens Falls-Albany round trips by Air North, nearly 92 percent of the travel agency tickets were for Albany flights. These results are consistent with those reflected in Allegheny's exhibits in the earlier phase of the Service to Glens Falls Case, wherein a survey of Allegheny's Glens Falls area telephone reservations for April, 1973 showed that 83 percent of such reservations resulted in bookings at Albany. Similarly, 95 percent of all tickets issued by Glens Falls travel agents for the February 11—March 10, 1973 period were for use at Albany, see Exs. A-414, 415, 416, Docket 21387.

*Warren County argues that alleged park-land use of the airport is contrary to the County Plan. We are not persuaded that there is any reason to deny Allegheny's application. We agree. It does not appear that there is anything that significantly affects the use of the airport. As noted above, the vast majority of Glens Falls travelers now use the Albany airport, and, presumably, the parking lot.
Since Allegheny is currently unsubsidized, and Glens Falls is, in any event, ineligible for subsidy, the costs of continuing uneconomic service at Glens Falls must be borne by Allegheny and, ultimately, by the traveling public in the form of higher fares or poorer service.

If the action on the overall economic well-being of the community in deciding deletion cases, we are unable to conclude that termination of certificated service will have a material adverse effect on the overall growth and development of Glens Falls. 15

This is not to say, of course, that air service through the local airport could not make some contribution to the area's development. However, as we have indicated in the past, we would be unwilling to use our regulatory authority as a means of assisting a community which sought to provide a financial guarantee for air service which it viewed as necessary. 16

Our examination of Glens Falls' air service needs convinces us, first, that the traveling public in general should not be burdened with the cost of continued air service and, second, that Glens Falls is not a likely candidate for air service underwritten by the Federal Treasury in light of any legislative changes or future policy action which might arise. In such circumstances, deletion at this time is appropriate and a grant of Allegheny's application is required by the public convenience and necessity. 17

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein and amending the certificate of public convenience and necessity of Allegheny Airlines, Inc., for Route 87 so as to delete Glens Falls, N.Y., therefrom, effective April 12, 1977.

2. Any interested person having objection to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within 21 days after the service of a copy of this order, file with the Board, and serve upon all parties to this proceeding, a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

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;

5. A copy of this order shall be served upon The County of Warren, N.Y.; Airport Manager, Warren County Airport; the New York State Department of Transportation; the Postmaster General and Allegheny Airlines, Inc., who are hereby made parties to the proceeding in Docket 29927.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Taylor,
Secretary.

APPENDIX A.—Aircraft departures at Glens Falls

<table>
<thead>
<tr>
<th>Period</th>
<th>Departures Scheduled</th>
<th>Departures Performed</th>
<th>Performance factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 1975.</td>
<td>294</td>
<td>295</td>
<td>99.0</td>
</tr>
<tr>
<td>January 1976...</td>
<td>307</td>
<td>297</td>
<td>96.9</td>
</tr>
<tr>
<td>February 1976.</td>
<td>279</td>
<td>276</td>
<td>98.9</td>
</tr>
<tr>
<td>March 1976.....</td>
<td>270</td>
<td>256</td>
<td>94.4</td>
</tr>
<tr>
<td>April 1976.....</td>
<td>270</td>
<td>247</td>
<td>91.5</td>
</tr>
<tr>
<td>May 1976......</td>
<td>279</td>
<td>255</td>
<td>91.4</td>
</tr>
<tr>
<td>June 1976......</td>
<td>270</td>
<td>245</td>
<td>90.7</td>
</tr>
<tr>
<td>July 1976......</td>
<td>263</td>
<td>261</td>
<td>99.6</td>
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<tr>
<td>August 1976....</td>
<td>275</td>
<td>254</td>
<td>92.6</td>
</tr>
<tr>
<td>September 1976.</td>
<td>202</td>
<td>165</td>
<td>82.1</td>
</tr>
<tr>
<td>Total........</td>
<td>2,523</td>
<td>2,483</td>
<td>98</td>
</tr>
</tbody>
</table>

* * *

14 We note, in this connection, that between 1970 and 1972 the community continued to grow and prosper notwithstanding the Mohawk strike and the substantial reduction in service thereafter. Exs. WC-105 and 107: Tr. 19-22, Warren County Brief pp. 11-16. Furthermore, testimony establishes the good health of the community continued through 1973 in the face of service which the Board found to be substandard. Tr. 60, 132, Ct. 140.

15 See, by way of example, Application of Ozark Air Lines, Inc., Order 72-3-43, March 14, 1972, and orders cited therein, where the Board granted Ozark exemption authority to provide service to Lake of the Oaks under a plan whereby the local business interests financially guaranteed an experimental pattern of seasonal service. See also Application of US Air for Service to Emery County, Utah, Orders 76-6-159, August 31, 1976 and 76-10-84, October 19, 1976, where we discussed a similar pattern of certificated service in which the commuter replacement carrier expended significant advertising funds on its own in an attempt to promote service and the State of Utah actually subsidized the commuter operation.

For similar reasons, we do not share the community's view that capital expenditures at the Warren County Airport justify a continuation of local air service. Indeed, in view of our tentative finding that further service by Allegheny has virtually no prospects for success, we believe that a continuation of such service would correspondingly benefit the community since it would tend to encourage further expenditures by the Federal government and the local community for needless airport development.

Effective date of

<table>
<thead>
<tr>
<th>Period</th>
<th>Last New York departure for Glens Falls</th>
<th>Last New York departure for Glens Falls</th>
<th>Departure from New York City</th>
<th>Departure from New York City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec. 1, 1975 to Feb. 29, 1976</td>
<td>0530</td>
<td>9740</td>
<td>0845</td>
<td>1400</td>
</tr>
<tr>
<td>Mar. 1 to Apr. 14, 1976</td>
<td>0630</td>
<td>0930</td>
<td>1300</td>
<td>1630</td>
</tr>
<tr>
<td>Apr. 15 to Sept. 30, 1976</td>
<td>0645</td>
<td>0945</td>
<td>1315</td>
<td>1645</td>
</tr>
</tbody>
</table>

APPENDIX C.—Elapsed time between the first morning arrival and last evening departure under the Air North Allegheny schedules serving Glens Falls and New York City

<table>
<thead>
<tr>
<th>Period</th>
<th>First New York arrival in New York City</th>
<th>Last New York departure for Glens Falls</th>
<th>Elapsed time available in New York City (hours and minutes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dec. 1, 1975 to Feb. 29, 1976</td>
<td>0530</td>
<td>9740</td>
<td>0845</td>
</tr>
<tr>
<td>Mar. 1 to Apr. 14, 1976</td>
<td>0630</td>
<td>0930</td>
<td>1300</td>
</tr>
<tr>
<td>Apr. 15 to Sept. 30, 1976</td>
<td>0645</td>
<td>0945</td>
<td>1315</td>
</tr>
</tbody>
</table>

APPENDIX D.—Summary of traffic and financial results for the Glens Falls-Albany Allegheny commuter service

<table>
<thead>
<tr>
<th>Period</th>
<th>Traffic response</th>
<th>Financial results</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Glens Falls-Albany</td>
<td>Albany-Glens Falls</td>
</tr>
<tr>
<td></td>
<td>Total Per Total Per</td>
<td></td>
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*These four markets were not included in Eastern's previous 3-per cent increase effective December 1, 1976.*
they would exceed costs.¹ The remaining
increments do not appear excessive and the Board will permit them to be
accepted effectively.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof.

If Ordered, That:
1. Pending hearing and decision by the Board, the increased rates, charges, and provisions described in Appendix A hereof are suspended and their use de¬ clined during the period of suspension, except by order or special permission of the Board; and
2. Copies of this order shall be filed with the tariffs and served upon all parties in Docket 26603.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

APPENDIX A—TARIFF C.A.B. No. 57, ISSUED BY AIR TARIFS CORPORATION. AGENT

1. All increased general commodity rates, minimum charges, and provisions on the pages listed in paragraph 3 below, as they would be used in the determination of rates and minimum charges in conjunction with exception ratings to general commodity rates in Item Nos. 1, 3, and 4 in Section 4 on behalf of "EA".

2. All increased Eastern air express general commodity rates, minimum charges, and provisions on the pages listed in paragraph 3 below, as they would be used in the determination of rates and minimum charges in conjunction with exception ratings to general commodity rates in Item Nos. 1, 3, and 4 in Section 4 on behalf of "EA".

3. Pages which contain rates, charges, and provisions suspended in paragraphs 1 and 2 above:
14th Revised Page 20
14th Revised Page 30
15th Revised Page 32
15th Revised Page 33
15th Revised Page 34
17th Revised Page 34
17th Revised Page 36

¹ Industry-average costs, as adopted by the administrative law judge in the Domestic Air Freight Rate Investigation, Docket 22899, and updated for cost increases during the 12-month period ended September 30, 1976. See also 9198, 7-12-131 and 76-11-146. Excep-
tion-rated commodities are charged percentages of the general commodity rate. Excep-
tion rates which are suspended, together

DEPARTMENT OF COMMERCE
Bureau of the Census
CENSUS ADVISORY COMMITTEE ON THE BLACK POPULATION FOR THE 1980 CENSUS
Public Meeting
Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., Appendix I (1974)), notice is hereby given that the Census Advisory Committee on the Black Population for the 1980 Census will convene on March 11, 1977 at 9:00 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on the Black Population for the 1980 Census is composed of 21 members appointed by the Secretary of Commerce. It was established in October 1974 to advise the Director, Bureau of the Census, on such 1980 census planning elements as improving the accuracy of the population count, recommending subject content and tabulations of special use to the black population, and expanding the dissemination of census results among present and potential users of census data in the black population.

The agenda for the meeting is: (1) current status of the 1980 census planning; (2) race, ethnic origin, and language questions; (3) Camden, N.J. protest census—report on operations, and Committee members' observations; (4) Oakland, California protest census; (5) affirmative action; (6) Census Bureau's Public Information Office plans for the 1980 census; and (7) Committee review and discussion of recommendations.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive participation from the public is encouraged. Persons wishing further information concerning these meetings or who wish to submit written statements may contact: Robert L. Hagan, Acting Director, Bureau of the Census, Federal Building 3, Room 5779, Suitland, Maryland. Mailing address: Washington, D.C. 20233. Telephone: 301-763-1010.


Robert L. Hagan,
Acting Director,
Bureau of the Census.

SURVEY OF RETAIL SALES, PURCHASES, AND INVENTORIES
Determination
In accordance with title 13, United States Code sections 182, 224, and 225, and due notice of consideration having been published January 3, 1977 (42 FR 59), I have determined that certain 1976 annual data for retail trade are needed to provide a sound statistical basis for the formation of policy by various government agencies, and that these data are applicable to a variety of public and business needs. This annual survey is a continuation of similar surveys conducted each year since 1951. It provides, on a comparable classification basis, data covering 1975 and 1976 year-end inventories and 1976 annual sales and purchases. These data are available only on a timely basis from nongovernmental or other governmental sources.

Reports will be required only from a selected sample of retail firms in the United States. The sample will provide, with measurable reliability, statistics on the subjects specified above. Reports will be requested from a sample of stores on the basis of their estimated sales size, selection in the existing census list (mail) sample panels, and location in census designated sample areas.

Report forms will be furnished to the firms covered by the survey and will be due 20 days after receipt. Copies of the forms are available on written request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that an annual survey be conducted for the purpose of collecting these data.


Robert L. Hagan,
Acting Director,
Bureau of the Census.

[FR Doc. 77-4687 Filed 2-14-77: 8:45 am]

Maritime Administration

[Docket No. S-546]

CHAS. KURZ AND CO., INC., ET AL.
Multiple Applications
Notice is hereby given that the subject companies, Chas. Kura & Co., Inc.,
By Order of the Maritime Subsidy Board.


JAMES S. DAWSON, JR.,
Secretary.

[F.R. Doc. 77-4776 Filed 2-14-77; 8:45 a.m.

National Oceanic and Atmospheric Administration
NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting


The New England Fishery Management Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This meeting of the Council will be held on March 8 and 9, 1977, from 10:00 a.m. to 5:00 p.m., and 9:00 a.m. to 3:00 p.m., respectively, at the Holiday Inn, Junction of Routes 1 and 128, Peabody, Massachusetts.

PROPOSED AGENDA
1. Review of Council management plans: Cod, Haddock and Yellowtail
2. Review of foreign offshore fishing activities.
3. Review of Council staff and office matters.
4. Review of foreign fishing permit applications, if any.
5. Other management business.

This meeting is open to the public and there will be seating for approximately 30 public members available on a first-come, first-served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are made prior to the meeting. Interested members of the public should contact:

Mr. Spencer Apolonia, Executive Director, New England Fishery Management Council, c/o National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930.

on or about 10 days before the meeting to receive information on changes in the agenda, if any.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business.

Interested members of the public who wish to provide written comments should do so by submitting them to Mr. Apolonia at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the Council meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

WINFIELD H. MEHOLM, Associate Director,
National Marine Fisheries Service.

MARINE MAMMALS

Receipt of Application for a General Permit

Notice is hereby given that the following applications have been received to take marine mammals incidental to the course of commercial fishing operations as authorized by the Marine Mammal Protection Act of 1972 (41 U.S.C. 1361-1367) and the regulations thereunder.

John Longline—Gillnet Association, Zentkeren Building, 7, Hikawako-cho, Chiyoda-ku, Tokyo, Japan, has applied for a general permit, Category 2, “Other Gear,” and Japan Deep Sea Trawlers Association, Daito Building, 6/F, Ogasawara-chi, 3-8, Kanda, Chiyoda-ku, Tokyo, Japan, has applied for a general permit, Category 1, “Towed or Dragged Gear.”

The National Federation of Medium Trawlers, Showa Kaihatsu, 3-2, Kaisui-ga-seki 3, Chiyoda-ku, Tokyo, Japan, has applied for a general permit, Category 1, “Towed or Dragged Gear.”

Copies of the applications are available for review in the following offices:

Robert J. Ayers,
Acting Assistant, for Fisheries Management, National Marine Fisheries Service.


CONSUMER PRODUCT SAFETY COMMISSION

PRIVACY ACT OF 1974

System of Records Amendment; Adoption of New Routine Use and Corrections to Notice

In the FEDERAL REGISTER of December 17, 1986 (41 FR 55220, FR Doc. 76-
37150), the Consumer Product Safety Commission proposed, in accordance with section 3(e)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(e)(11), to adopt the routine use set forth below. This routine use was proposed in order to provide for the disclosure of accident reports made by Commission personnel to other Federal, State or local agencies as authorized by section 29(e) of the Consumer Product Safety Act, as amended. The Commission invited public comment on the proposed routine use. No comments were received.

Accordingly, the following routine use for Commission system of records CPSC-1, Accident Reports (In-Depth) as published in the Federal Register, September 2, 1976 (41 FR 37292) is hereby adopted:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records may be provided to another Federal, State or local agency or authorized entities relating to health, safety or consumer protection in accordance with section 29(e) of the Consumer Product Safety Act, as amended (Pub. L. 94-272, as amended by Pub. L. 94-284, 15 U.S.C. 2078(e)).

In addition, Commission system of records CPSC-1, as published in the Federal Register of September 2, 1976 contains an error in the paragraph titled "Retrievability". That paragraph should read as follows:

Retrievability:

Records are retrievable by a coded number which indicates the date of assignment of the investigation, the Commission unit requesting the report, the product involved and a sequential number assigned to the investigation.


SAUVE E. DUNN
Secretary, Consumer Product
Safety Commission.

[FR Doc. 77-4692 Filed 2-14-77; 8:45 am]

DEPARTMENT OF DEFENSE
Office of the Secretary
DEPARTMENT OF DEFENSE WAGE
WAGE COMMITTEE
Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-465, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 26, 1977 at 9:45 a.m. in Room 20381, The Pentagon, Washington, D.C.

The Committee’s primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower and Reserve Affairs) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92-362. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-465, the Federal Advisory Committee Act, meetings may be closed to the public when they are concerned with matters listed in section 552(b) of the Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency, (5 U.S.C. 552(b)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552(b)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that this meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552(b)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552(b)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be of interest of the Committee’s attention. Additional information concerning this meeting may be obtained by contacting the Chairman, Department of Defense Wage Committee, Room 30281, The Pentagon, Washington, D.C.

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


[FR Doc. 77-4764 Filed 2-14-77; 8:45 am]

LABOR-MANAGEMENT ADVISORY COMMITTEE OCCUPATIONAL SAFETY AND HEALTH

Establishment, Organization, and Functions

In accordance with the provisions of Public Law 92-465, Federal Advisory Committee Act, notice is hereby given that the Labor-Management Advisory Committee on Occupational Safety and Health has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law. The Office of Management and Budget has also reviewed the justification for this advisory Committee and concurs with its establishment.

The nature and purpose of the Labor-Management Advisory Committee on Occupational Safety and Health is indicated below:

The committee will be constituted and will serve as the consultative body to the Office of the Secretary of Defense and the Department of Defense Components at the national level pursuant to the guidelines set forth in 29 CFR 1900.17, as prescribed in Executive Order 11807. The Committee will meet quarterly, or more often as necessary, at the call of the Deputy Assistant Secretary of Defense (Environment and Safety), to consult and advise the Assistant Secretary for Installations and Logistics on occupational safety and health matters coming within the purview of Executive Order 11807, which implements Public Law 91-586, the Occupational Safety and Health Act of 1970.

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

[FR Doc. 77-4680 Filed 2-14-77; 8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION [ERDA—1555-D]

PORTSMOUTH GASEOUS DIFFUSION PLANT SITE: PIKETON, OHIO

Availability of and Public Hearing Concerning Draft Environmental Statement, ERDA—1555-D, Portsmouth Gaseous Diffusion Plant Site, Piketon, Ohio, has been issued pursuant to the Energy Research and Development Administration’s (ERDA) Implementation of the National Environmental Policy Act of 1969.

This notice is hereby given that the Draft Environmental Statement, ERDA—1555-D, Portsmouth Gaseous Diffusion Plant Site, Piketon, Ohio, has been issued pursuant to the Energy Research and Development Administration’s (ERDA) Implementation of the National Environmental Policy Act of 1969. The statement

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
was prepared to assess the cumulative impact on the environment of operation of the Portsmouth gaseous diffusion plant, including the impact of offsite electric power generating plants which supply power to the plant.

The Portsmouth gaseous diffusion plant has been in operation for about 20 years as part of ERDA's uranium enrichment complex. The plant consists of five main process buildings with an improved capacity of 5.2 million separative work units per year, which are housed in three process buildings covering about 32 acres of the 640-acre site. Upon completion of the Cascade Improvement and Cascade Upgrading Programs, the capacity of the Portsmouth plant will be 8.6 million separative work units per year.

A separate draft environment impact statement (ERDA-1549) was issued for review and comment in October 1976 covering a proposed add-on to the Portsmouth plant. The add-on will have essentially twice the enrichment capacity as the current improved and upgraded plant.

Copies of the draft statements have been distributed for the plant and comment to Federal, State, and local agencies and other organizations and individuals. Copies of the draft statements and comments received on the ERDA-1549 draft are available for public inspection in the ERDA public document rooms located at:

- ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
- Chicago Operations Office, 2600 South Canal Avenue, Argonne, Illinois.
- Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
- Richland Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
- Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft environmental impact statement are requested from other interested agencies, organizations and individuals. Single copies of the draft statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, U.S. Energy Research and Development Administration, Mail Station E-201, Washington, D.C. 20545 (301-353-4241). Comments should be sent to the above address.

In accordance with guidelines from the Council on Environmental Quality, agencies and members of the public submitting comments on the draft environmental statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. It would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the Portsmouth activities, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives. Commenting entities may recommend modifications to the draft environmental impact statement which will enhance environmental quality and avoid or minimize adverse environmental impacts. Comments on the draft environmental statement will be placed in the above-referenced document rooms and will be considered in the preparation of the final environmental impact statement if received by April 4, 1977.

Notice is also given that ERDA will conduct a public hearing in connection with the draft statement commencing at 9:00 a.m. on April 5, 1977, at the Netherland Hilton Hotel, Fifth and Racine Streets, Chicago, Illinois.

The purpose of the hearing is to afford further opportunity for public comment regarding the draft statement (ERDA-1555-D) and for the furnishing of any additional information which will assist ERDA in the continued operation of the plant.

The hearing will be conducted by a three-man Presiding Board chaired by Mr. W. H. Pennington, Chairman of the ERDA Board of Contract Appeals. The other two members of the Board will be Daniel Biechrest of the Pittsburgh Energy Research Center and Philip F. Gustafson of Argonne National Laboratory. Two members of the Board will constitute a quorum if one member is the chairman.

Persons, organizations, or governmental agencies wishing to participate but who do not file a timely notice as specified herein, may notify Mr. Pennington before the hearing or the Presiding Board during the hearing of their desire to make a presentation. Such parties will be admitted as "limited participants" and shall be heard at such times as shall be determined by the Presiding Board in its discretion, unless the Presiding Board, in its discretion, allows additional time.

The public hearing will be legislative in nature. Formal discovery, subpoena of witnesses, cross-examination of participants, testimony under oath and similar formal procedures appropriate to a trial-type hearing will not be provided. Participants may, but need not, be represented by counsel. Participants and their counsel will reference and produce, on request of the Presiding Board, the documents which constitute the hearing record.

Persons, organizations, or governmental agencies wishing to participate may elect to answer any questions either orally at the hearing or subsequently in writing submitted in a summary of the substance of the proposed testimony or questioning.

The agency will make available appropriate witnesses to explain the background and purpose of the operation of the plant, the contents of the draft environmental impact statement, and to respond to appropriate questions.

Questions may be posed to participants (including ERDA staff members), during the course of the hearing or by other participants (including ERDA staff members) and the Presiding Board, either orally or in writing provided that:

1. All questions shall be subject to the control and discretion of the Presiding Board.

2. Questions shall be limited to participants who have not provided advance notice of their participation only to the extent that they are relevant to issues identified in the draft statement, and any participant (including ERDA staff members) may elect to answer any such questions either orally at the hearing or subsequently in writing.

3. Consistent with the full and true disclosure of the facts, duplicative, redundant, or otherwise inappropriate testimony or questioning will not be permitted and the Presiding Board will impose suitable restrictions to that end.

4. The Presiding Board is authorized to take appropriate action to control the course of the hearing, including authority to maintain order; rule on offers of, and receive, evidence; dispose of procedural requests or similar matters; allocate the time available for presentation; provide for consolidation of presentations, as appropriate; examine participants or witnesses; and hold closed sessions. The Presiding Board will also determine the time available for presentation, and may establish time limits for such presentation.

The public hearing will be conducted by a three-man Presiding Board. The purpose of delineating contested issues or for other purposes within the authority of the Presiding Board.

In addition to controlling the course of the hearing, the Presiding Board may examine participants in order to elicit fuller information, probe sensitive issues, and discover the bases and sources of
views, so as to produce a satisfactory record upon which the agency may evaluate the concerns of the interested public.

The course of the hearing will be made. The record of the hearing shall consist of the transcript, all documents received into the record by the Presiding Board, and a Report of the Presiding Board. The record shall be placed in the ERDA public document room soon after the close of the hearing where it will be available for inspection by members of the public.

After the close of the hearing record, the Presiding Board shall render its Report and forward it, together with the record to the Administrator. The document will be considered in the preparation of the final environmental statement and in making determinations concerning the continuation of the operation of the plant. The Report shall be based upon the Presiding Board's review of the draft environmental statement and the hearing record and shall: (a) Identify those unresolved issues raised at the hearing which the Presiding Board deems to be critical to future decisions concerning the Program, and (b) present the recommendations of the Presiding Board concerning the treatment of these issues in the final environmental statement in a manner which will promote informed decision-making. In discharging its function, however, the Presiding Board shall not undertake to resolve issues or render judgment concerning the course of the Program.

Dated at Germantown, Md., this 10th day of February 1977.

For the Energy Research and Development Administration

JAMES L. LIVERMAN, Assistant Administrator for Environment and Safety.

ENVIRONMENTAL PROTECTION AGENCY

[FR Doc. 77-4842 Filed 2-14-77; 8:45 am]

NOTICES

AIR QUALITY STANDARDS

Petition for Review of Photochemical Oxidant Criteria, Standard, and Control Program

On December 9, 1976, the American Petroleum Institute and 29 member companies (collectively "API") petitioned the Administrator of the Environmental Protection Agency to institute administrative proceedings to review and revise the Agency's present air quality criteria, standard, and control program for photochemical oxidants.

Specifically, the action petitioned the Agency to:

(1) Revise the air quality criteria for photochemical oxidants pursuant to section 108(c) of the Clean Air Act within six months of the filing of the Petition in light of information regarding the causes, effects, and extent of ozone and oxidants detailed in the Petition;

(2) Revise the national primary ambient air quality standard pursuant to section 109(b)(1) of the Clean Air Act based on studies described in the Petition;

(3) Revise the national secondary ambient air quality standard pursuant to section 109(b)(2) of the Clean Air Act;

(4) State the new primary and secondary standards so as to permit reliable assessments of compliance by existing monitoring networks;

(5) Specify the exclusive use of an appropriate measurement method such as ethylene chemiluminescence for determining the degree of necessary control efforts are appropriate and effective.

Of course, the risk of unnecessary industry and consumer expense must be balanced against the risk of damage to the health and welfare of the public.

For the Energy Research and Development Administration

JAMES L. LIVERMAN, Assistant Administrator for Environment and Safety.

[FR Doc. 77-4842 Filed 2-14-77; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FR Doc. 77-4842 Filed 2-14-77; 8:45 am]
Control, held September 12-20, 1976, in Raleigh, North Carolina. Formal reviews of this conference are being prepared, highlighting natural O₃ and other aspects of oxidant formation, transport and measurement. The work will proceed over the next several months, reaching a consensus when possible. The evaluation will be done principally by non-EPA scientists, primarily academicians and consultants.

It is my judgement that the EPA's current approach to the problem has impeded progress. I have attached a list of recommendations which I believe would be helpful. I think that these recommendations are applicable to O₃ and other pollutants.

As far as the impact on existing regulations, I do not expect any. Our current programs on organic emission controls focus on broad urban areas having 0, levels far in excess of what has been done. In many cases, the currently required emission controls are not based on attainment but on application only of available control technology. Generally, it is our belief that new information on effects, transport, natural sources and other control effectiveness will require more, not less, control of organics than to existing regulations. If so, we will of course build on what has been done to date.

On those studies that have proceeded far enough for external review we have involved representatives of API or member companies. I have attached a list of some of the formal contacts that we have had with these representatives. It is EPA policy to consult with all affected groups—industry, environmentalists, State and local air pollution control officials and the public—prior to selecting strategies or publishing guidelines. This is especially important in an area as complex as O₃, reduction, and we expect to have the opportunity to review the impacts of our oxidant program review. All interested members of the public will be encouraged to participate in meetings and hearings and to provide formal comments. In this regard, we met with your representatives on January 18, 1977, and we look forward to working with API and the oil industry in reexamining the technical bases for the air pollution control programs for O₃.

Sincerely yours,

ROGER STRELOW
Assistant Administrator for Air and Waste Management.

Enclosures to the letter, a copy of the API petition, and supporting materials will be available for review at Public Information Reference Unit, EPA, 401 M Street, S.W., Washington, D.C. 20460.

Dated: February 8, 1977.

EDWARD F. TUREK
Acting Assistant Administrator for Air and Waste Management.

[FR Doc. 77-4642 Filed 2-14-77; 8:45 am]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Receipt of Application for Reference or Equivalent Method Determination

Notice is hereby given that on January 4, 1977, the Environmental Protection Agency received an application from the Thermo Electron Corporation, Waltham, Massachusetts, to determine if its Model 43 Pulsed Fluorescent SO₂ Analyzer with Aromatic Hydrocarbon Cutter should be designated by the Administrator of the EPA as a reference or equivalent method under 40 CFR Part 53, promulgated February 18, 1975 (40 FR 7044). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Dated: February 8, 1977.

WILSON K. TALLERBY
Assistant Administrator for Research and Development.

[FR Doc.77-4641 Filed 2-14-77; 8:45 am]

SCIENCE ADVISORY BOARD (EXECUTIVE COMMITTEE)

Open Meeting

Pursuant to Pub. L. 82-463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held on March 4, 1977. The meeting will begin at 9:00 a.m. and will take place in Room 1101, Waterside Mall, West Tower, 401 M Street, S.W., Washington, D.C.

The agenda includes reports on the activities of member committees and subcommittees of the Board; consideration of Committee action on a prospectus proposing that the Agency place greater emphasis on exploratory research on environmental problems; action to determine the approach of the Board to response to an Agency request to review a revised air quality standards document for photochemical oxidants; a brief discussion of Agency responses to past activities of the Board; and Member items of interest.

The meeting is open to the public. Any individual or organization wishing to attend, participate, present a paper or obtain additional information should contact Dr. Thomas D. Bath at (202) 755-0263, no later than February 28, 1977.


THOMAS D. BATH
Staff Director, Science Advisory Board.

[FR Doc.77-4640 Filed 2-14-77; 8:45 am]

STATE OF HAWAII

Issuance of Specific Exemption To Control Carmine Mite on Papaya on Island of Maui; Correction

In FR Doc. 76-38239 appearing at page 58383 in the issue of December 30, 1976, the fourth sentence of paragraph 2 in the second column is corrected to read as indicated below. Three sentences have also been added before the final sentence of that paragraph.

Beginning with the fourth sentence, that paragraph should read as follows:

Based on a petition granted by this Agency that calls for a sixty (60) day preharvest interval after application of Morestan, EPA has granted a one-half (0.5) ppm tolerance for residues of the pesticide in or on orange fruits. The first application of Morestan will be to nonbearing papaya plants. However, if a second application becomes necessary, Morestan would be applied to papaya bearing fruit; in this case a ninety (90) day preharvest interval will be observed. Further, EPA has determined that residue levels as a result of this application should not exceed 0.5 ppm in order to protect the public health. No serious adverse effects on man and the environment are anticipated as a result of use of this pesticide on papaya in Prince's Orchard, located in an isolated area on the Island of Maui.

Dated: February 8, 1977.

EDWIN L. JOHNSON
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-4645 Filed 2-14-77; 8:45 am]

MICHIGAN

State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides; Approval Status

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), provides that the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan for such purpose, subject to approval by the Environmental Protection Agency (EPA).

On June 19, 1976, the Michigan State Plan was approved, contingent upon promulgation of necessary regulations under the Michigan Pesticide Control Act. Notice of contingent approval was published in the Federal Register (41 FR 28841) on July 13, 1976. Subsequently, on November 10, 1976, regulations necessary to implement the Michigan Pesticide Control Act were promulgated. The implementing regulations establish the following new commercial applicator subcategories under category 7. These subcategories have been added to the State Plan.
Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (66 Stat. 973 (7 U.S.C. 136 et seq.)) and 40 CFR Part 171, the Honorable James A. Rhodes, Governor, State of Ohio, has submitted a State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval. All legal authorities necessary to implement the State Plan have been established and are effective.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region V, to approve this Plan. A summary of the Plan follows. The entire Plan, together with all appendices (except for complete examinations and sample examination questions), may be examined during normal business hours at the following locations:

(1) Office of the Director, Ohio Department of Agriculture, 65 S. Front St., Columbus, Ohio 43215, telephone 614-460-2732.

SUMMARY OF STATE PLAN

The Ohio Department of Agriculture (ODA) has been designated the State lead agency for the administration of the pesticide applicator certification program. The Ohio Pesticide Law of 1976 provides for an Interagency Pesticide Advisory Council which reviews policies, procedures, legislation and regulations pertaining to the pesticide regulatory program, including pesticide applicator certification. The Council consists of the directors of the ODA, Department of Natural Resources, Agricultural Research and Development Center, the Dean of the College of Biological Sciences of the Ohio State University, and one member each of the State House of Representatives and State Senate. The ODA is responsible for enforcement of the Ohio Pesticide Law.

The State Cooperative Extension Service has overall responsibility for pesticide applicator training programs. This includes the selection and development of most of the training materials. Dates and locations of training programs, along with scheduled applicator examinations, are jointly determined by the Cooperative Extension Service and the ODA.

Legal authority for the program is contained in the Ohio Pesticide Law and Rules and Regulations which became effective on January 1, 1977. Copies of these legal authorities are attached to the State Plan.

The Plan indicates that adequate personnel are available to the ODA and cooperating agencies to carry out the certification program. The Plan includes a budget for the pesticide program within the ODA for the 1976-1977 biennium. In addition, Federal monies will also be available for applicator certification. The Agency has determined that adequate funding is available to carry out the certification program.

The ODA will submit an annual report to EPA on or before July 1 of each year and other reports requested by the Administrator of EPA.

Ohio estimates that approximately 9,000 commercial and 35,000 private applicators will need to be certified. Both certified commercial and private applicators will be issued certification credentials. The credential will identify in which category (ies) and subcategory (ies), if any, the applicator is certified.

For commercial applicators, the ODA plans to continue to categorization scheme utilized under the State applicator licensing program established in 1970. Categories described in the State Plan are those found in 40 CFR 171.3(b). Two new categories are proposed: Aerial Pest Control-Animal subcategory, 40 CFR 171.3. Subcategories are proposed as follows:

(1) Aerial Pest Control.
(a) Rotary Wing.
(b) Fixed Wing.
(2) Agricultural Pest Control.
(a) Agronomic Pest Control.
(b) Horticultural Pest Control.
(c) Agricultural Weed Control.
(d) Tobacco Sucker Control.
(e) Soil Fumigation.
(3) Aquatic Pest Control.
(a) Electric.
(b) Swimming Pool.
(4) Industrial Vegetation Control (Right-of-Way Pest Control).
(a) General.
(b) Blacktopping.
(5) Animal Pest Control (Agriculture related).
(a) General.
(b) Sheep Dipping.
(c) Animal Quarantine Pest Control.

Standards of competency for commercial applicators in Ohio are the same as those in 40 CFR 171.4 (a), (b) and (c) and 171.6. Standards for the two new categories have been established or are elaborated in the State Plan. All commercial applicators of restricted use pesticides will be required to pass written examinations covering both the general standards and the specific standards for the category/subcategory in which they wish to become certified. No performance testing procedures are proposed. All written examinations will be administered and graded by the ODA. To renew a certificate, commercial applicators will be required to either (1) take another examination, or (2) attend a five hour ODA approved training course, at three year intervals.

The standards of competency for private applicators are the same as those listed in 40 CFR 171.5 and 171.6. Private applicators will be certified in one or more of twelve categories as identified in the State Plan. Applicator competency will be determined on the basis of a written examination covering the required competency standards and one or more category examinations covering the applicator's specific area of agricultural production. Applicants who fail the written examination will be given an opportunity to retake the written examination at a later date or take an oral examination conducted by an ODA official. The procedure for renewing a private applicator certificate is the same as for the commercial applicator. Private applicator certificates will be valid for a three year period.

A single purchase/single use procedure for private applicators is elaborated in the State Plan. This procedure entails prepaid training courses conducted by either Cooperative Extension Service or ODA official, geared to the objective of establishing the applicator's competency in the use of a single product for a single use. After October 21, 1976, the single purchase/single use option will be available to applicants only in emergency situations involving unpredicted pest outbreaks.

An applicant who can not read may complete the same training courses available to other applicants. However, the nonreader will be tested orally on the training course material by an ODA representative. Certification will be limited to those products in which the nonreader has demonstrated competency.

Sample examination questions for new categories and subcategories of commercial applicators and training requirements for the private applicant and existing commercial applicator licensing categories, are attached to the Plan. However, in view of the need to preserve the confidentiality of the examination...
format, sample questions and complete examinations have been removed from the public inspection copies of the Plan.

A statement addressing state certification under the Government Agency Plan (GAP) will be forwarded within 60 days after the approval of GAP by the EPA.

The Ohio Department of Agriculture has not entered into any reciprocal agreements with other states. Any agreements which are made will be forwarded to EPA as part of the Plan.

Other Ohio regulatory activities and authorities are pesticide registration, restricted use pesticide dealer licensing and regulation, and product sampling and analysis. A regular program of inspection, product sampling, and follow-up investigations of accidents and complaints will continue by ODA personnel.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of Ohio to the Regional Administrator, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. The comments must be received on or before March 17, 1977, and should bear the identifying notation (OPP-48042). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned location from 8:30 a.m. to 5:30 p.m. Monday through Friday.


DOUGLAS D. CAMPIT.
Acting Director,
Registration Division.

[PR Doc.77-4793 Filed 2-14-77:8:45 am]

PESTICIDE PROGRAMS

Chlorofluorocarbons in Aerosol Products

The Registration Division, Office of Pesticide Programs, Environmental Protection Agency (EPA), has addressed two notices to registrants of pesticide products containing chlorofluorocarbons. Because of demonstrated interest in aerosol products containing chlorofluorocarbons by other parties, the Agency is taking this opportunity to give notice of the actions taken thus far with regard to the registration and/or reregistration of pesticide products containing this ingredient. Both notices are reproduced below.

Anyone wishing to comment on these notices should address such remarks to the Federal Register Section, Technical Services Division (WH-509), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M Street, SW, Washington, D.C. 20460. Three copies of the comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. on normal business days.


GEORGE R. ALEXANDER, Jr.
Regional Administrator Region V.

[PR Doc.77-4644 Filed 2-14-77:8:45 am]

MOBIL CHEMICAL CO.

Issuance of an Experimental Use Permit

Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136(a) et seq.), and experimental use permit has been issued to the following applicant. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172; Part 172 was published in the Federal Register on April 30, 1975 (40 FR 18780), and defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 2224—EUP-9. Mobil Chemical Company, Richmond, Virginia 23221. This experimental use permit allows the use of 1,760 pounds of the insecticide ethoprop on cabbage, corn, peanuts, soybeans, and tobacco, to evaluate control of armyworms and cutworms. A total of 745 acres is involved; the program is authorized only in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit became effective on January 26, 1977, and to January 26, 1978. Permanent tolerances have been established for residues of the active ingredient in or on cabbage, corn, peanuts, and soybeans.

Interested parties wishing to participate in the experimental use permit are referred to Room E-116, Pesticide Programs Division, (WH-507), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20466. It is suggested that such interested persons call 202/785-4851 before visiting the EPA Headquarters Office, so that the appropriate permit may be conveniently available for review purposes. This file will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.


DOUGLAS D. CAMPIT.
Acting Director,
Registration Division.

[PR Doc.77-4793 Filed 2-14-77:8:45 am]

[FEDERAL REGISTER, VOL 42, NO. 31— TUESDAY, FEBRUARY 15, 1977]
NOTICES

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (66 Stat. 973; 7 U.S.C. 136 et seq.) and 40 CFR Part 171, the Honorable George Busbee, Governor of the State of Georgia, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On July 29, 1975, the Regional Administrator, EPA Region IV, approved the Plan on a contingency basis for a twelve-month period. Notice of the approval was published in the Federal Register on August 5, 1975 (40 FR 31489).

Theasury, as amended (66 Stat. 973; 7 U.S.C. 136 et seq.) and 40 CFR Part 171, the Honorable George Busbee, Governor of the State of Georgia, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On July 29, 1975, the Regional Administrator, EPA Region IV, approved the Plan on a contingency basis for a twelve-month period. Notice of the approval was published in the Federal Register on August 5, 1975 (40 FR 31489).

The Agency finds that there is good cause for approving the request and has granted an extension until July 1, 1977.


JOHN A. LITTLE,
Acting Regional Administrator, Region IV.

[FR Doc.77-4789 Filed 2-14-77;8:45 am]

[FR Doc.77-4789 Filed 2-14-77;8:45 am]

STATE OF MISSISSIPPI

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (66 Stat. 973; 7 U.S.C. 136 et seq.) and 40 CFR Part 171, the Honorable George Busbee, Governor of the State of Georgia, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On January 1, 1977, the Honorable William L. Walker, Governor of the State of Mississippi, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On January 6, 1976, the Regional Administrator, EPA Region IV, approved the Plan on a contingency basis for a twelve-month period. Notice of the approval was published in the Federal Register on February 11, 1976 (41 FR 6122).

The Mississippi Pesticide Application Act and the Mississippi Pesticide Law were passed by the Mississippi Legislature on March 4, 1975. Proposed regulations for the enforcement of the Acts have been drafted, public hearings have been held and final regulations are expected to be published by April 1, 1977. As a result, on February 14, 1977, the State of Mississippi requested an extension of the Mississippi contingency approval pending final promulgation of regulations as described in the State Plan. The Agency finds that there is good cause for approving the request and has granted an extension until July 1, 1977.


JOHN A. LITTLE,
Acting Regional Administrator, Region IV.
NOTICES

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21095]

ALI HASSAN

Designating Application for Hearing on Stated Issues


Released: February 8, 1977.

In the matter of the application of Ali Hassan, 6043 Third Avenue, Los Angeles, California 90043, for Amateur Radio Station and (Technician Class) Operator Licenses.

It appears, that the applicant is the licensee of Citizens Band radio station KFN-4952.

It further appears, that in light of the evidence adduced pursuant to the foregoing issues, whether the applicant has the requisite qualifications to be a licensee in the Amateur Radio Service.

It is further ordered, That the application for hearing regarding Ali Hassan's requisite qualifications would serve the public interest, convenience and necessity.

It further appears, that in light of the evidence adduced pursuant to the foregoing issues, whether the applicant has willfully or repeatedly violated the Commission's Rules.

It is further ordered, That to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall within 20 days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

Chief, Safety and Special Radio Services Bureau.

GERALD M. ZECKERMAN,
Chief, Legal, Advisory and Enforcement Division.

[FR Doc. 77-4787 Filed 2-14-77; 8:45 am]

COVE BROADCASTING CO., INC. AND ALTOONA TRANS-AUDIO CORP., INC.

Designating Applications for Consolidated Hearing on Stated Issues


Released: February 9, 1977.

In re applications of Cove Broadcasting Company, Inc., Hollidaysburg, Pennsylvania, requests: 104.9 MHz, #285A; 120 W (H&V); 1,220 ft. (H&V); and Altoona Trans-Audio Corporation, Altoona, Pennsylvania, requests: 104.9 MHz, #285A; 235 W (H&V); 890 ft. (H&V); for construction permits.

The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned applications which are mutually exclusive in different communities.

The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

The applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That pursuant to sections 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

5. It is further ordered, That to avail themselves of the opportunity to be heard, the applicant herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

6. It is further ordered, That the applicant herein shall, pursuant to Section 311(a) (2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed by Section 311(a) (2), as ruled, it shall advise the Commission of the publica-
tion of such notice as required by § 1.594(g) of the Rules.

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

[FR Doc.77-4669 Filed 2-14-77;8:45 am]

TV BROADCAST APPLICATIONS
Availability for Processing

Notice is hereby given, pursuant to § 1.572(c) of the Commission's Rules, that on March 8, 1977 the TV Broadcast applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.581(b) of the Commission's Rules, an application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on March 7, 1977 which involves a complete and substantially complete with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by the close of business on March 7, 1977.

The attention of any party in interest desiring to file pleadings concerning any pending TV broadcast application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION
VINCENT J. MULLINS, Secretary.

NOTICES

[FR Doc.77-4538 Filed 2-14-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION
CONSTRUCTION ADVISORY COMMITTEE
Meeting
Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-433, 86 Stat. 770) notice is hereby given that the Construction Advisory Committee will meet Wednesday, March 9, 1977, at 10 a.m., Conference Room B, Departmental Auditorium, Constitution Avenue between 12th and 14th Streets, NW, Washington, D.C.

The Committee was established to advise the Administrator, FEA, with respect to the interests and problems of the construction industry as they relate to the national energy shortage.

The agenda for the meeting is as follows:

1. Opening Remarks by Robert A. Georgine, President, Building and Construction Trades Department, APL-CIO, and Harry P. Taylor, President, Council of Construction Employees.
2. Summary of Old and New Committee Business.
3. Committee Reorganization.
5. Energy Conservation, Voluntary or Mandatory.
6. Comments from the Floor (10 Minute Rule).

Subcommittees may meet informally in Washington, D.C. the preceding evening, at the discretion of the Subcommittee Chairmen; the meetings will be open to the public. Notice of Subcommittee activities, call Los G. Weeks, Director, Advisory Committee Management at (202) 588-7022.

The Committee meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements to the Committee, Advisory Committee Management, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 2107. FEA, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of this transcript from the reporter.


DAVID G. WILSON, Acting General Counsel.

FEDERAL MARITIME COMMISSION
[Independent Ocean Freight Forwarder License No. 1687]

ACTION WORLD SHIPPERS, INC.
Order of Revocation

By letter dated January 17, 1977, Ms. Susan E. Lee, President, Action World Shippers, Inc., 4239 No. Cordova, Norridge, IL 60634 was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1687 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission or before February 7, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 519.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Action World Shippers, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised section 5.01(c)) dated June 30, 1975,

It is ordered, That Independent Ocean Freight Forwarder License No. 1687 issued to Action World Shippers, Inc., be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1687 be and is hereby revoked effective February 7, 1977.

It is further ordered, That a copy of this Order be published in the Federal Register and served upon Action World Shippers, Inc.

LEROY F. PULLE, Director, Bureau of Certification and Licensing.

[FR Doc.77-4649 Filed 2-14-77;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)
Certificates Issued

Notice is hereby given that the following vessel owners and operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(a)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certif-
<table>
<thead>
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<th>Owner/operator and vessels</th>
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<td>Union Carbide Corp.: USL-499, USL-608, USL-609.</td>
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<td>Far Eastern Shipping Co.: Kapitan Tauskely, Uden, Ilya Mochnik, Gavril Krutschev.</td>
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<td>05943</td>
<td>Kanagawa Prefectural Government: Shosan Maru.</td>
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<td>06294</td>
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<td>07235</td>
<td>Teh Tung Steamship Co. Ltd.: Bolnes.</td>
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<td>07366</td>
<td>Compagnie Maritime des Chargements: Brevard, Chevrier Paul, Chevrier Rose.</td>
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<td>Gulf Atlantic Transport Corp.: Gato 91.</td>
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<td>10519</td>
<td>Moore-McCormack Bulk Transport Inc.: Nornarsky.</td>
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<td>10700</td>
<td>Coordinated Caribbean Transport Inc.: Consolidator.</td>
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<td>Hanawajin Shipping Co. Ltd.: Blue Matsugawa, Blue Uromas, Dona Placid.</td>
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<td>Pescapuciera S.A.: Pescapuciera Torero.</td>
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<td>11864</td>
<td>Bekker Industries Corp.: NMS 1952, NMS 1953.</td>
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<th>Owner/operator and vessels</th>
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<td>Utierwijk Corp.: Solar Explorer, Maria U, Polar Argentina.</td>
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<td>Rederij M.S. Nyberg A/S: Imko.</td>
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<td>12198</td>
<td>Barque Shipping Corp.: Mariam.</td>
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NOTICES

Certificate for revocation.

Unit: Notis Shipping Corp.: Notis.
Certificate No.: Ocean Freight Forwarder License No. 952

12212—Alden Shipping Co. Ltd. and Bibby Line Inc.: Yolex.

12211—Antares: Partrederiet for Mt Inland.


12221—Evermore Ascendant Shipping Ltd.: Sweet Flag.

12226—Evermore Ascendant Shipping Ltd.: Vioflag.

By the Commission.

JOSEPH C. POLKING, Acting Secretary.

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977

J. E. BERNARD & CO., INC.

Order of Revocation

On February 7, 1977, Edward L. Jordan, Vice President and General Manager, J. E. Bernard & Co., Inc., 1111 Nicholas Blvd., Elk Grove Village, IL 60007, voluntarily surrendered his Independent Ocean Freight Forwarder License No. 952 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in 49 U.S.C. 814, I hereby revoke effective February 7, 1977 the said license with prejudice to reapply for a license in the future.

It is further ordered, That a copy of this Order be published in the Federal Register and served upon J. E. Bernard & Co., Inc.

LEROY F. FULLER, Director Bureau of Certification & Licensing.

[FR Doc.77-4777 Filed 2-14-77:8:45 am]

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. 793, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Federal Maritime Commission, Washington, D.C. 20573, on or before March 7, 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:


Agreement No. 9976-6, among Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha and Yamashita-Shinnihon Steamship Company, Ltd., is a petition to extend the duration of Agreement No. 77, the Coastal U.S.A. Container Service Agreement, to and including August 22, 1980. The agreement has a present termination date of August 22, 1977.


By order of the Federal Maritime Commission.

JOSEPH C. POLKING, Acting Secretary.

[FR Doc.77-4774 Filed 2-14-77:8:45 am]

PUERTO RICO PORTS AUTHORITY AND PUERTO RICO MARITIME SHIPPING AUTHORITY

Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 793, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreements 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 March 7, 1977.

Anyone desiring a hearing on the proposed agreements 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 agreements filed by:

Joseph C. Polking, Acting Secretary.

[FR Doc.77-4772 Filed 2-14-77:8:45 am]

PACIFIC WESTBOUND CONFERENCE

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. 793, 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 agreements 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 March 7, 1977.

Anyone desiring a hearing on the proposed agreements 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.
NOTICES

FEDERAL POWER COMMISSION

PROJECT NO. 82

ALABAMA POWER CO.

Further Extension of Time

On January 28, 1977, Alabama Power Company filed a motion to further extend the time to comply with ordering paragraph (B) of Opinion No. 596-A issued August 31, 1976, as most recently modified by notice issued December 15, 1976 in the above-designated proceeding. The motion states that Staff Counsel has no objection to the extension of time.

Upon consideration, notice is hereby given that an extension of time is granted to and including March 1, 1977, with which to comply with ordering paragraph (B).

JOSPH C. POLKING,
Acting Secretary.

[FR Doc.77-4773 Filed 2-14-77;8:45 am]

ALBANIA GAS TRANSMISSION CO.

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

FEBRUARY 8, 1977.

Takne notice that Alabama Gas Transmission Company ("Alogquin Gas") on January 13, 1977, tendered for filing Twenty-Seventh Revised Sheet No. 10 to its FPC Gas Tariff, First Revised Volume No. 1.

This tariff sheet is being filed pursuant to Alogquin Gas' Purchased Gas Cost Adjustment Provision set forth in Section 17 of the General Terms and Conditions of its FPC Gas Tariff, First Revised Volume No. 1. The rate adjustment, asings will be filed to the Commission on February 8, 1977.

An original and ten copies of the proposed agreement shall be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 7, 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 shall 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:

Edward D. Ransdell, Esq., Lillie McLeod & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement: No. 57-104, filed on behalf of the members of the Pacific Westbound Conference, amends the Appendix (Rules and Regulations) to the basic agreement by the addition of a new Article 14 which establishes procedural rules for the operation of the independent action provision set forth in the second paragraph of Article 1(e) of the agreement, as amended. The independent action provision provides that any member line to the agreement may take independent action with respect to intermodal tariff matters.


By order of the Federal Maritime Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4774 Filed 2-14-77;8:45 am]

NOTICES

FEDERAL REGISTER

NOTICES

FEDERAL POWER COMMISSION

[Project No. 82]

ALABAMA POWER CO.

Further Extension of Time


On January 28, 1977, Alabama Power Company filed a motion to further extend the time to comply with ordering paragraph (B) of Opinion No. 596-A issued August 31, 1976, as most recently modified by notice issued December 15, 1976 in the above-designated proceeding. The motion states that Staff Counsel has no objection to the extension of time.

Upon consideration, notice is hereby given that an extension of time is granted to and including March 1, 1977, with which to comply with ordering paragraph (B).

JOSPH C. POLKING,
Acting Secretary.

[FR Doc.77-4773 Filed 2-14-77;8:45 am]

ALBALA GAS TRANSMISSION CO.

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

February 8, 1977.

Takne notice that Alabama Gas Transmission Company ("Alogquin Gas") on January 13, 1977, tendered for filing Twenty-Seventh Revised Sheet No. 10 to its FPC Gas Tariff, First Revised Volume No. 1.

This tariff sheet is being filed pursuant to Alogquin Gas' Purchased Gas Cost Adjustment Provision set forth in Section 17 of the General Terms and Conditions of its FPC Gas Tariff, First Revised Volume No. 1. The rate adjustment, asings will be filed to the Commission on February 8, 1977.

An original and ten copies of the proposed agreement shall be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 7, 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 shall 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:

Edward D. Ransdell, Esq., Lillie McLeod & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement: No. 57-104, filed on behalf of the members of the Pacific Westbound Conference, amends the Appendix (Rules and Regulations) to the basic agreement by the addition of a new Article 14 which establishes procedural rules for the operation of the independent action provision set forth in the second paragraph of Article 1(e) of the agreement, as amended. The independent action provision provides that any member line to the agreement may take independent action with respect to intermodal tariff matters.


By order of the Federal Maritime Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4774 Filed 2-14-77;8:45 am]
NOTICES

[Cities Service Gas Co.
Proposed Changes in FPC Gas Tariff
February 8, 1977.]

Take notice that Cities Service Gas Company (Cities Service) on January 10, 1977, tendered for filing proposed changes in its FPC Gas Tariff. Second Revised Volume No. 1. Cities Service states that the proposed changes are based solely on increased purchase gas costs which will result from filings by one of its pipeline suppliers, Oklahoma Natural Gas Gathering Corporation (ONGG). The proposed effective date is February 23, 1977.

ONGG's increased rate reflected on its Second Amended Eleventh Revised Sheet PQA-1 was accepted by Commission order issued January 3, 1977, in Docket No. RP72-115 (PGA77-1) and permitted to become effective January 1, 1977.

Cities Service states that it has filed its Eighteenth Revised Sheet PGA-1 to reflect the rate on ONGG's Second Amended Eleventh Revised Sheet PQA-1.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions, and all parties to the proceeding in Docket Nos. RP72-142 and RP74-135.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.9 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.9, 1.10). All such petitions or protests should be filed on or before February 22, 1977. 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 or protest. Copies of the filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMS
Secretary.

[FR Doc.77-4719 Filed 2-14r-77;8:45 am]

[Consolidated Gas Supply Corp.
Order Accepting for Filing and Suspending Proposed Initial Emergency Modification of Curtailment Plan and Providing for Hearing
February 8, 1977.]

On January 25, 1977, Consolidated Gas Supply Corporation (Consolidated) tendered for filing in Docket No. RP77-29 proposed First Revised Sheet No. 36 to its FPC Gas Tariff, Second Revised Volume No. 1. Consolidated proposed thereby to incorporate a new section 11.06 of the general terms and conditions of its tariff, entitled "Interim Emergency Modification of Curtailment Plan." The proposed modification would have preceded deliveries of natural gas by Con-

solidated for priority 1 industrial loads in excess of plant protection requirements to any of its customers serving loads in priority 2 or lower. Source Consolidated requested that the proposed modification be made effective on January 27, 1977, and to remain in effect through March 31, 1977.

On January 26, 1977, the Public Service Commission of the State of New York (New York) filed a notice of intervention in the proceeding and moved the Commission to defer action on Consolidated's proposed modification. The additional time was required to enable Consolidated's customers, including those in New York, to analyze and discuss the possible impact of Consolidated's proposed. On February 1, 1977, New York filed a protest stating that the proposed new section 11.06 would inhibit New York's flexibility in dealing with situations which could result in drastic economic dislocation for individual industrial companies and their employees in the state of New York.

On February 3, 1977, Consolidated submitted for filing proposed Substitute First Revised Sheet No. 36, embodying certain revisions to the originally proposed new section 11.06 of its tariff. For the reasons stated below, the Commission finds the interim emergency modification of Consolidated's curtailment plan, as proposed in its filing of February 3, 1977, may be reasonable in light of the emergency situations now existing in Consolidated's service area and the economic effects, including unemployment, of the proposed temporary emergency plan. However, since the Commission is acting under a waiver of the normal notice requirements and Consolidated has informed the Commission that the state regulatory commissions have thus far had only limited opportunity to comment on the proposal, the proposed substitute temporary plan shall be suspended for one day, permitted to go into effect thereafter on February 8, 1977, and set for hearing. The plan shall be implemented upon the lifting of Consolidated's force majeure curtailment plan.

The Commission orders: (A) Consolidated's Substitute First Revised Tariff Sheet No. 36 is accepted for filing, suspended for one day, and permitted to become effective thereafter as proposed.

The substitute proposal submitted by Consolidated on February 3, 1977, represents an effort to achieve the desired objective, but does not satisfy the objections raised by New York. Substitute section 11.06 incorporates two changes in the original plan. First, the amended provision would first become effective upon the lifting of the current force majeure curtailment and continue through March 31, 1977. Consolidated requests an effective date of February 5, 1977, which presumably is the expected date of implementation of the emergency plan. Second, the prohibition against deliveries of gas to Consolidated's priority 1 industrial loads in excess of plant protection requirements to any of its resale customers serving loads in priority 3 or below, has been amended to except resale customers served, with state regulatory approval, with gas which would otherwise be physically delivered to identified higher priority customers.

Consolidated has informed the Commission that it has canvassed all its jurisdictional sale customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, and West Virginia, and states that none of the customers or state commissions has raised any objection to the substitute emergency plan.

On the basis of a review of Consolidated's filing and the facts and circumstances disclosed, the Commission finds that the proposed interim emergency modification of Consolidated's curtailment plan may be reasonable and in the public interest. The Commission further finds that the adverse economic consequences which might result to industrial plant closings and related unemployment in Consolidated's service area constitute an emergency situation warranting the waiver of the Commission's notice requirements so that the immediate implementation of the proposed temporary emergency plan may be reasonable and in the public interest. The Commission further finds that the adverse economic consequences which might result to industrial plant closings and related unemployment in Consolidated's service area constitute an emergency situation warranting the waiver of the Commission's notice requirements so that the immediate implementation of the proposed temporary emergency plan may be reasonable and in the public interest.

The Commission finds that the adverse economic consequences which might result to industrial plant closings and related unemployment in Consolidated's service area constitute an emergency situation warranting the waiver of the Commission's notice requirements so that the immediate implementation of the proposed temporary emergency plan may be reasonable and in the public interest.

By the Commission.

KENNETH F. PLUMS
Secretary.
NOTICES

[FR Doc. 77-4706 Filed 2-14-77; 8:45 am]

DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION

Request for Extension of Approval and Confirmation of Rates

February 8, 1977.

Take notice that in January 27, 1977, the Secretary of the Interior (Interior), on behalf of the Southwestern Power Administration (SWPA), filed with the Commission a request for extension of confirmation and approval of the following rate schedules:

- Rate Schedule P-1 (Firm Power)
- Rate Schedule P-2 (Revised) (Peak Power)
- Rate Schedule EE (Excess Energy)
- Rate Schedule IC (Interruptible Capacity)

Contract No. 14-02-001-864 (with Oklahoma Gas and Electric Company and Public Service Company of Oklahoma)

Contract No. 14-02-001-866 (with Tex-La Electric Cooperative, Inc.)

The Commission, by order issued August 17, 1976, in this docket, extended its confirmation and approval of the above rate schedules to November 30, 1976. Interior is currently requesting that the Commission extend its confirmation and approval of the rate schedules set forth above to June 30, 1977.

Interior states that studies completed by SWPA indicate that revenues derived under the presently effective rate schedules are inadequate to fulfill SWPA's repayment obligation as required by Section 5 of the Flood Control Act of 1944. Interior further states that an increase of approximately $10.0 million per year in additional revenues will be required and that SWPA is currently making preparations to review a draft system repayment study supporting the increase with its 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 in accordance with the provisions of its tariff. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission 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 February 25, 1977. Protesters 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 unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 77-4707 Filed 2-14-77; 7:45 am]

ENERGY RESERVES GROUP, INC.

Petition for Special Relief

February 8, 1977.


Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or 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 party wishing to become a party to a proceedings, 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. 77-4707 Filed 2-14-77; 7:45 am]

FLORIDA GAS TRANSMISSION CO., ET AL.

Findings and Order Issuing a Limited Term Temporary Certificate Authorizing Sale and Purchase of Natural Gas


On February 2, 1977, Florida Gas Transmission Company (Florida), Southern Natural Gas Company (Southern) and Sun Oil Company (Sun) filed a joint application for an emergency limited term certificate with the Commission pursuant to Section 7 of the Natural Gas Act in order to allow Sun to sell to Southern up to 40,000 MMBtu per day released by Florida Power Corporation (Florida Power) for up to thirty days, all as more fully set forth in the joint application in this proceeding.

Southern asserts and the Commission has found that a state of emergency exists on the Southern system as a result of limited available gas supplies and abnormally large gas requirements in light of the substantially colder than normal winter weather now prevailing east of the Rocky Mountains. By telegram dated January 18, 1977, the Commission stated, “You are to use the above provisions of Southern's tariff to the extent necessary to maintain deliveries at least of the amount currently being sold to Florida and to meet essential priority requirements and any service to entities not properly classified in Priority One which cannot safely sustain natural gas curtailments pursuant to Section 7 of the Natural Gas Act in order to allow Sun to sell to Southern up to 40,000 MMBtu per day, but further declines in available storage can be replenished. Distributors report that, notwithstanding the curtailment of industrial users, their peak shaving has also reached critical levels (an average of 4 or 5 days supply of propane). Replenishment of the distributors' peak shaving is hampered by the cold weather and adverse climate conditions prevailing east of the Rocky Mountains, and that cold weather has continued in these areas.

To alleviate this emergency situation on the Southern system and to implement the Commission's January 18
directive, Southern proposes to purchase up to 40,000 MMbtu of natural gas from Sun for a thirty-day period. The gas will be delivered to Southern by Florida Gas at existing service rates. Sun has gas available for this sale to Southern because Florida Power has agreed to reduce its gas purchases as a result of these emergency circumstances on the condition that Sun sell all or part of the gas pursuant to Section 157.29 of our Regulations. Southern seeks authority from the Commission to purchase the gas for Priority One requirements and/or to replenish its dwindling Muldon Storage Field and to make all parties whole and are not in-consideration.

Sun seeks authority to make the limited term sales to Southern for a period of up to thirty days and to terminate that sale at the end of that period or when sooner terminated by Florida Power without further order of the Commission. Sun would make this sale without doubt at a price not less than Florida Power's handling fuel oil and Florida Power's ratepayers. Southern expects Sun to pay Florida Power the current contract price of approximately 11 cents per MMBtu.

As provided in the agreements, Southern will pay Sun the current contract rate authorized by its contract with Florida Power and the fuel oil supplier (a non-affiliated supplier) at $1.53 per MMBtu. Florida Power will continue to pay Florida Gas for the full transportation charges pursuant to Florida Gas FPC Tariff, Rate Schedule T-1,1,7-1, in addition, Southern will pay Florida Power for the transportation of gas above existing transportation obligations, which in the case of Sun is approximately 11 cents per MMBtu for all volumes sold to Southern. Southern will pay Sun Florida Gas for the transportation of gas above existing transportation obligations, which in the case of Sun is approximately $1.53 per MMBtu. Thus, the net price for Southern to purchase gas from Sun under these agreements is $1.64 per MMBtu. Florida Power will pay Sun to acquire additional gas supplies to meet its "current essential Priority I requirements and any services to entities not properly classified in Priority I which Florida Power has agreed to purchase at a price below the market price as determined by the Commission.

(1) Applicants are not in-consideration. Further, the present or future public convenience and necessity permit the adoption of this order. The record shows that Sun Oil Company has gas available for this sale to Southern beginning January 20, 1977, tendered for filing as an initial rate and that Sun Oil Company has gas available for this sale to Southern beginning January 20, 1977, tendered for filing as an initial rate.

(2) The Commission finds that prior public notice of this proceeding is impracticable, unnecessary and contrary to the public interest and therefore should be permitted as a matter of general public policy.

The Commission orders: (1) Pursuant to Sections 4, 5, 7, and 16 of the Natural Gas Act, temporary certificates are issued to Sun Oil Company authorizing the limited term sale of gas to Southern Natural Gas and to Florida Gas Transmission Company authorizing the transportation of gas to Southern under the following terms and conditions:

A. The sale by Sun shall be made for a period of 39 days from the date delivery of the first gas shall be terminated unless terminated sooner under the agreement between Southern and Sun. Sun will allow Southern to surrender gas without further order of the Commission at the end of that period. Florida Power will be reimbursed for the gas shipped on the sale underway at the time delivery of the first gas shall be terminated unless terminated sooner under the agreement between Southern and Sun.

B. Southern Natural is authorized to track the cost of this transaction including the amounts paid to Sun and to Florida Gas for the gas and its transportation to and from Florida Power's fuel oil supplier (less the amount which would have been paid to Sun by Florida Power through the Purchased Gas Adjustment Provision in Section 17 of its FPC Gas Tariff, Sixth Revised Volume No. 1. Section 15.4.38(b) of the Regulations under the Natural Gas Act amended to permit the same publication of the costs incurred by Southern pursuant to the terms of this order.

(2) All parties to these emergency transactions have acted to ameliorate a critical gas supply shortage on the Southern system and therefore shall not be prejudiced in any pending or future proceedings including any present or future proceeding before this Commission as a result of providing this emergency assistance. Nor shall Sun be precluded from using the provisions of Section 157.29 of our Regulations as a result of this limited term sale to Southern hereunder.

(3) Southern shall submit, as exhibits to the joint application, the Agreements implementing this limited term sale within ten days from the date of this order.

(4) For the purpose of avoiding any future emergency situations, the Secretary shall cause this order to be published in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUNKETT, Secretary.

[PR Doc. 77-4718 Filed 2-14-77; 8:45 am]

Docket No. ER77-175

FLORIDA POWER & LIGHT CO.

Agreement To Provide Specified Transmission Service

FEBRUARY 8, 1977.

Take notice that Florida Power & Light Company (FP&L), on January 28, 1977, tendered for filing as an initial rate application an agreement executed only by it, entitled "Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and The Utilities Commission Of The City of New Smyrna Beach, Florida." Under the Agreement, FP&L will transmit to the Utilities Commission of the City of New Smyrna Beach (City) the City's portion of the power and energy generated from Florida Power Corporation's Crystal River No. 3 Nuclear Power Unit (CR-3), together with any power and energy resources provided by Florida Power Corporation as backup to CR-3, all as specified in the Agreement.

A. FP&L requests an effective date of March 1, 1977 the date scheduled for commercial operation of CR-3. FP&L states that a copy of the filing was served on the Utilities Commission of New Smyrna Beach, Florida.

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 1.6 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.6, 1.10). All such petitions or protests should be filed on or before February 21, 1977. 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
NOTICES

FLORIDA POWER & LIGHT CO.

Order Accepting for Filing and Denying Motion To Reject Application, Granting Intervention, Providing for Hearing


Florida Power & Light Company (FP&L) submitted for filing on November 26, 1976, an application seeking, pursuant to Section 203 of the Federal Power Act, an order authorizing it to acquire the fixed assets constituting the electrical system owned and operated by the City of Vero Beach, Florida. In its application FP&L states that it will pay a sum of up to $39,857,000 in exchange for the assets, subject to adjustments at the time of closing.

Vero Beach is a municipally owned system and the sale of the facilities is not subject to judicial intervention. FP&L is a "public utility" under the Federal Power Act and the acquisition of the Vero Beach power system is subject to Commission jurisdiction.

Notice of the application was issued by the Commission December 9, 1976, with comments, protests, or petitions to intervene due on or before January 10, 1977. On January 10, 1977, a timely "Protest, Petition to Intervene and Motion to Reject Application" was filed by John B. Dawson, Eugene Lyon, and Fred Gossett. Dawson, Lyon and Gossett subsequently filed an "Errata Sheet" on January 19, 1977, making minor revisions of their original filing. Dawson claims to be a resident and taxpayer of the City of Vero Beach, Florida and an electric purchaser from the municipal system although not a resident of Vero Beach. Lyon alleges that he is an electric purchaser from the municipal system although not a resident of Vero Beach, and Gossett avers that he is an electric purchaser from the municipal system although not a resident of Vero Beach or an electric purchaser from the municipal system.

Staff Counsel filed an "Answer To Protest, Petition To Intervene and Motion To Reject of John B. Dawson, Eugene Lyon, and Fred Gossett," on January 13, 1977, a copy of which was served on all parties of record in the proceeding. Staff Counsel recommended (1) that the motion to reject FP&L's application be denied and that FP&L's application be accepted for filing; (2) that the Petitioners Dawson, Lyon, and Gossett be granted permission to intervene and be made full parties to the proceeding; and (3) that a formal investigation and hearing be held in the proceeding.

On January 10, 1977, within the time prescribed for intervention in the proceeding, the Attorney for the City of Vero Beach filed a letter with the Commission in support of the application of FP&L. The Attorney for the City sent a letter to Staff Counsel dated January 21, 1977, which was received on January 25, 1977, requesting that the prior letter be considered a new filing.

FP&L filed an Answer to the Dawson, et al. Protest, Petition and Motion on January 23, 1977, and suggested that all pending petitions for intervention should be denied, that the motion to reject the application was meritless and should be denied, and that a hearing in this proceeding would be adverse to the public interest.

Petitioners Dawson, et al., raise substantial objections to the proposed acquisition, including the possibility of anticompetitive practices by FP&L in its dealings with the City of Vero Beach, the failure of the City to adequately assess (a) the true value of the municipal system, (b) the effect that the sale would have on the City's future credit position, and (c) other viable alternatives to outright sale to FP&L. They also question the timing of FP&L's announcement of a retail rate increase request, only a few days prior to petition to Interven 1, 1976, city-wide referendum on the proposed acquisition.

FP&L responds that the proposed retail rate increase was adequately explained to the City in a full page advertisement. In a City newspaper prior to the voting day, it also avers that the sale will be supported by the Vero Beach utility and that the sale is overwhelmingly approved by the City electorate. Further, it alleges that the sale will result in lower retail rates for the present customers of the municipal system. In sum, FP&L maintains that the sale is in the public interest and that a hearing is neither mandated by Section 203 of the Federal Power Act nor is it necessary in this proceeding.

It is the standard to be applied in determining whether the Commission should approve a merger is whether the merger comport with the public interest. In Commonwealth Edison Company and Central Illinois Gas and Electric Company 36 FPC 927, 931 (1966), the Commission announced:

In other words, the ultimate determination in passing upon a merger application is not whether in the Commission's judgment a merger is the only technique by which the companies involved could accomplish the over-all objectives of the Act; rather, it is enough if, upon our analysis of all the relevant factors, we conclude that the merger, in the particular circumstances of the applicants, is consistent with the public interest. (emphasis supplied)

The Commission again addressed itself to the issue of the standard to be applied in deciding to authorize a merger of electric utilities in its Order Authorizing Merger, issued May 25, 1976, Central Maine Power Company, Docket No. E-9547. At page 8 of the Order the Commission stated:

The mere existence of benefits, in the form of lower rates or otherwise, will not in itself justify a merger in substantial restraint of competition.

Petitioners Dawson, et al., have made allegations of possible substantial anti-competitive practices. It is the view of the Commission that a formal investigation be decided to resolve the allegations of restraint of competition before a merger can be authorized.

Furthermore, the Commission agrees with the position that it is not clear that a hearing would be required if only due to the magnitude of the proposed merger involved in this proceeding.

In Commonwealth Edison Company, supra, at page 930, the Commission restated its intention (from a prior order) to "require public hearings in the future on all applications requesting approval of the merger or consolidation of two or more Class A electric utilities." Although Vero Beach is a municipal system and, therefore, cannot be categorized as a Class A electric utility, its annual electric operating revenues in excess of the $2 million needed to attain Class A status.

The Commission finds: (1) Good cause exists to accept for filing FP&L's application for an order authorizing the purchase of the electric facilities of the City of Vero Beach and to deny the motion to reject the application of petitioners Dawson, Lyon, and Gossett.

(2) Good cause exists to grant the petition to intervene of Dawson, Lyon, and Gossett to intervene and each to be made a full party to the proceeding by virtue of his status as an electric customer of either FP&L or the City of Vero Beach system and the fact that it may be in the public interest.

(3) Good cause exists to grant the petition of the City of Vero Beach, Florida to intervene and be made a full party to the proceeding as it may be in the public interest.

(4) It is necessary and in the public interest that an evidentiary hearing be held in this Docket in order for the Commission to discharge its statutory responsibilities under Section 203 of the Federal Power Act.

It is the decision of this Commission, that FP&L's application, filed November 26, 1976, is hereby accepted for filing and the motion by Dawson, Lyon and Gossett to reject the application is hereby denied.

(5) That the petition to intervene of Dawson, Lyon, and Gossett is hereby granted as to each and each will be made a full party to the proceeding; provided, however, that the intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and provided, further, that the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

1 Answer of FP&L to Dawson et al., filed January 25, 1977. Page 8.
NOTICES

(C) That the petition to intervene of the City of Vero Beach, Florida, is hereby granted and the City is made a full party to the proceeding; provided however, that participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and provided, further, that the admission of such intervenor shall not be construed as recognition by the Commission that he might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) An evidentiary hearing on the application will be held at 10 a.m. in a hearing room at the Federal Power Commission, 825 North Capitol St., N.E., Washington, D.C. 20426.

(F) That nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding settlement pursuant to Section 1.18 of the Commission’s Rules of Practice and Procedure.

(G) That the Secretary shall cause the following to be issued, without further notice being given by the Commission:

PACIFIC GAS AND ELECTRIC CO.
issuance of Annual License(s)

By the Commission.

[FR Doc. 77-4710 Filed 2-14-77; 8:45 am]

February 8, 1977.


The license for Project No. 164 was issued effective February 23, 1923, for a period ending February 22, 1972. Since expiration of the original license, the project has been maintained and operated under annual licenses, the most recent of which will expire on February 22, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee’s application, it is appropriate and in the public interest to issue an annual license to the Pacific Gas and Electric Company.

Take notice that an annual license is issued to Pacific Gas and Electric Company for the period February 23, 1977, to February 22, 1978, under federal license, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the El Dorado Project No. 164 subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before February 22, 1976, a new annual license will be issued each year thereafter, effective February 23 of each year, until such time as Federal takeover takes place or a new license is issued, without further notice being given by the Commission.

[FR Doc. 77-4710 Filed 2-14-77; 8:45 am]

Kenneth F. Plumb, Secretary.

MICHIGAN WISCONSIN PIPE LINE CO.
Tender of Stipulation and Agreement

[FR Doc. 77-4700 Filed 2-14-77; 8:45 am]

February 8, 1977.

Take notice that on January 31, 1977, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing a Stipulation and Agreement together with a Motion for approval thereof to resolve the issues pending in the above-captioned dockets.

Michigan Wisconsin states that it has pending before the Commissioners a general rate increase proceeding resulting from a filing made on April 30, 1976, the effectiveness of which was suspended until November 1, 1976, by the Commission’s order of May 28, 1976. As effectuated subject to refund on November 1, 1976, the rates were adjusted to delete from the base certain non-fossil-fuel surcharges effective at October 31, 1976 and to reflect an increase in its purchased gas costs.

Under the Stipulation and Agreement, issues relating to the proposed general rate increase adjustment of certain advance payments and costs associated with the Gas Arctic and Northern Border projects have been reserved for Commission decision.

Copies of the Stipulation and Agreement are on file with the Commission and are available for public inspection. Any person desiring to comment on matters contained therein should file comments with the Federal Power Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before February 28, 1977. Any reply comments should be filed on or before March 11, 1977.

Kenneth F. Plumb, Secretary.

[FR Doc. 77-4720 Filed 2-14-77; 8:45 am]

MID LOUISIANA GAS CO.
Order Approving Settlement Agreement and Providing for the Filing and Acceptance of Tariff Sheets

[FR Doc. 77-4700 Filed 2-14-77; 8:45 am]


On March 9, 1976, Mid Louisiana Gas Company (Mid-La) filed tariff sheets containing a proposed end-use curtailment plan which conforms almost exactly with the order of priorities set forth in Section 2.78 of the Commission’s General Policy and Interpretations (18 CFR 2.78) as promulgated by Order 497-B (49 FPC 583 (1973)). Mid-La’s end-use plan was proposed to replace its pro-rata curtailment plan previously approved by the Commission. (47 FPC 586 (1972)).

Afer due notice, one customer of Mid-La, Mississippi Valley Gas Company (MVGC), objected to the proposed plan. By order issued April 30, 1976, in the subject docket the Commission accepted for filing and suspended for one day Mid-La’s tariff sheets. MVGC had 30 days within which to file a formal objection, and was prescribed formal hearing to determine their lawfulness. By motion of Mid-La
the proposed curtailment plan was made effective on June 1, 1976.

Pending hearing in this proceeding Mid-La and MVGC reached an agreement which was set forth in a Stipulation and Agreement. At a hearing held July 27, 1976, the Stipulation and Agreement was tendered to the Presiding Judge without any express opposition thereon present. On July 29, 1976, the Presiding Judge certified to the Commission the Stipulation and Agreement along with proposed revised tariff sheets, Schedules A and B, which were certified as the exhibits of the settlement, and the attendant hearing record. After due notice of said certification, no comments adverse to the proposed settlement have been received.

The settlement curtailment plan provides for a 9-priority scheme with priority categories which deviate from those of Ord. 467-B in but two respects: (1) firm industrial sales under 300 Mf of gas per day are included in Priority 2, and (2) no customer storage injection volumes are reflected in Priority 2. Both these changes are for reasons peculiar to this case. The Commission has previously approved the inclusion of firm industrial requirements under 300 Mf per day in priority 2 for small companies such as Mid-La.9 As for the latter deviation, no storage injection volumes are reflected simply because none of Mid-La's customers have storage operations.

Mid-La's proposed curtailment plan provides temperature Adjustment Factors designed to protect high priority, temperature sensitive requirements. First, Mid-La's plan sets forth Daily Base Requirements, which represent each customer's usage, by priority, excluding any temperature sensitive requirements, to determine this requirement, sales during the May through September period are downwardly adjusted by subtracting the projected mean temperature for that period from 85°, the base temperature above which Mid-La presumes there is no heat-related consumption. Next, Mid-La's plan sets forth certain Temperature Adjustment Factors which are the quantities of gas that are required by each of Mid-La's customers for each degree day deficiency during each customer's Temperature Adjustment Factor by the projected degree day deficiency the customer's temperature sensitive load is derived. That temperature sensitive load is added to Daily Base Requirements to determine each customer's total requirements. Finally, Mid-La projects its curtailments as the volumetric difference, if any, between its customers' total requirements less Mid-La's projected gas supply.

According to the evidence in this case, Mid-La's deliveries to its customers are significantly influenced by temperature variations. Changes in the calculation procedure appears to be a reasonable means of providing for such temperature effect.

As reflected in the Stipulation and Agreement, the terms of the settlement have revised Mid-La's March 9, 1976, filing to include two changes of substance. The first modification permits balancing of deliveries. During the summer period May through September. Mid-La's customers may balance daily volumes over the entire five-month period. During the winter period October through April the balancing of deliveries is within any one month, subject to limitation on particularly cold days. The second modification establishes separate winter and summer Daily Base Requirements for the purpose of determining Mid-La's customers' adjustments, as well as sending Daily Base Requirements and Temperature Adjustment Factors for several customers, based on revised data. The calculations of the revised Daily Base Requirements and Temperature Adjustment Factors are shown on Schedules A and B, attached in the proposed settlement.

As previously indicated the foregoing modifications have not precipitated any further complaint. In fact, the only complaint (submitted by MGVC) regarding Mid-La's proposed curtailment plan has been withdrawn. The Commission finds that the proposal is approved as the settlement to be in the public interest.

It should be noted that the curtailment plan offered by Mid-La in settlement is a temporary plan; the effectiveness of which may be determined by the Commission, and that Mid-La and its customers may seek revisions in or earlier termination of the plan through appropriate proceedings. Because the settlement does not propose a permanent plan, a environmental impact statement is not required. The Commission finds that its approval of the instant settlement does not constitute a major Federal action significantly affecting the quality of the human environment.

The Commission finds: The settlement of this proceeding on the basis proposed and agreed to by the parties as summarized above and as more specifically set forth in the Stipulation and Agreement certified on July 29, 1976, is reasonable and proper in the public interest in carrying out the provisions of the Natural Gas Act, and such proposed settlement should be approved subject to the terms and conditions hereinafter prescribed.

The Commission orders: (1) The settlement of this proceeding on the basis of the terms contained in the Stipulation and Agreement is approved subject to any terms and conditions hereinafter ordered.

(2) The proposed tariff sheets attached to the Stipulation and Agreement are accepted for filing, made effective on the date of this order, and designated as follows:

Second Revised Sheets Nos. 22 and 23, First Revised Sheets Nos. 23(a) through 23(g) and Original Sheets Nos. 29 (a) and 29(h) to First Revised Volume No. 1 of Mid-La's FPC Gas Tariff.

(3) Mid-La shall file with the Commission the proposed tariff sheets attached to the Stipulation and Agreement within 15 days after the date of the issuance of this order.

By the Commission.

Kenneth F. Plum. Secretary.

[FR Doc.77-4711 Filed 2-14-77;8:45 am]

MONROE, UTAH

 Issuance of Annual License(s)

February 8, 1977.

On September 17, 1976, Monroe City, Utah, Licensee for the Lower Monroe Hydroelectric Project No. 632, located on Monroe Creek, in Fish Lake National Forest, Sevier County, Utah, filed an application for a license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 632 was issued effective February 16, 1926, for a period ending February 15, 1976. Since expiration of the original license, the project has been maintained and operated under an annual license which will expire February 15, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Monroe City, Utah.

Take notice that an annual license is issued to Monroe City, Utah, for the period February 16, 1977, to February 15, 1978. Should no annual license be issued the project will cease operation.

Kenneth F. Plum. Secretary.

[FR Doc.77-4711 Filed 2-14-77;8:45 am]
NOTICES

[Federal Register Volume 42, Number 31—Tuesday, February 15, 1977]

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[PR Doc.77-4698 Filed 2-14-77;8:45 am]

[FR Doc.77-408 Filed 2-14-77;7:4:45 am]

[FR Doc.77-408 Filed 2-14-77;7:45 am]

[FR Doc.77-408 Filed 2-14-77;7:45 am]

[FR Doc.77-440 Filed 2-14-77;7:45 am]

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[PR Doc.77-125 (PGA77-2)]

NATURAL GAS PIPELINE CO. OF AMERICA

Purchased Gas Cost Adjustment to Rates and Charges

FEBRUARY 8, 1977.

Take note that on January 14, 1977, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the following adjustments to Natural's FPC Tariff sheets, to be effective March 1, 1977:

- Thirty-first Revised Sheet No. 5
- Sixth Revised Sheet No. 5A

Natural states that the annual effect of producer supplier changes increases its purchased gas cost by approximately $76.9 million which equates to a current PGA unit adjustment of 7.56¢ per Mcf. Natural states that the annual effect of pipeline supplier changes amounts to an increase of $28.4 million and equates to a current PGA unit adjustment of 2.92¢ per Mcf.

By the Commission.

KENNETH F. PLUMB,
Secretary.

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[FR Doc.77-440 Filed 2-14-77;7:4:45 am]

[FR Doc.77-408 Filed 2-14-77;7:45 am]

[FR Doc.77-440 Filed 2-14-77;7:45 am]

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MONTANA POWER CO.

Findings and Order Further Amending Order Authorizing the Importation of Natural Gas


On July 19, 1976, Montana Power Company (Petitioner) filed in Docket No. CP74-187 a petition to amend further the Commission's order, issued March 21, 1975, in Docket No. CP74-187, as amended, pursuant to Section 3 of the Natural Gas Act by authorizing an increase in the annual volumes of natural gas which Petitioner can import from Canada into the United States at a border point near Aden, Alberta, Canada from 10,000,000 Mcf to 19,892,000 Mcf, effective November 1, 1976, as such volume is set forth in amendments to Canadian-Montana Pipeline Company's (Pipeline Company) export licenses issued by the National Energy Board of Canada (NEB), all as more fully set forth in the petition to amend further in this proceeding.

On July 29, 1976, the NEB issued orders authorizing Pipeline Company to export at Aden, Alberta, an additional quantity of gas to be purchased by Petitioner not to exceed 99,460 Mcf per day or 3,000,000 Mcf in any consecutive 12-month period commencing with November 1, 1976. Petitioner is currently authorized in the subject docket to import up to 99,460 Mcf of gas per day but only 10,000,000 Mcf in any 12-month period at Aden. Petitioner imports from Canada more than 70 percent of the natural gas supply necessary to serve its market and the ability of Petitioner to meet its market requirements and avoid curtailment of service directly depends on continued importation of natural gas under the authorization granted in the subject docket. Accordingly, Petitioner requests that its import authorization in the subject docket be amended to authorize the importation of natural gas from Canada into the United States at a border point near Aden up to 19,892,000 Mcf of gas during any consecutive 12-month period commencing November 1, 1976.

In view of the unprecedented cold weather which affected the United States east of the Rocky Mountains and the fact that numerous natural gas pipelines are now facing or shortly will face natural gas supply shortfalls to meet high priority loads and that emergency measures are needed to cope with this situation, the Commission reaches no conclusions as to the need of Petitioner relative to other pipelines. Viewed in the context of Petitioner's needs alone, we shall grant authorization for the proposed importation to the extent possible. The public interest requires that the authorization here issued be conditioned to allow a subsequent evaluation of the relative needs and appropriate response therefor. This authorization will be granted under the broad powers conferred upon the Commission by Sections 3 and 15 of the Natural Gas Act. Public Service Commission of the State of New York v. FPC, 327 F.2d 893, Niagara Mohawk Power Corporation v. FPC, 379 F.2d 153 (D.C. Cir., 1967).

Due notice of the filing of the petition to amend further and opportunity for hearing thereon has been given by publication in the Federal Register on August 11, 1976 (41 FR 33846). No petition to intervene, and no protest to the granting of the petition to amend further has been filed in this proceeding.

The Commission finds: It is necessary and appropriate to increase the annual volumes of natural gas which Petitioner can import from Canada into the United States at a border point near Aden, Alberta, Canada (NEB), all as more fully set forth in the petition to amend further in this proceeding.

By the Commission.

KENNETH F. PLUMB,
Secretary.

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[FR Doc.77-408 Filed 2-14-77;7:45 am]

[FR Doc.77-408 Filed 2-14-77;7:45 am]

[FR Doc.77-408 Filed 2-14-77;7:45 am]

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[FR Doc.77-440 Filed 2-14-77;7:45 am]

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[FR Doc.77-440 Filed 2-14-77;7:45 am]
authorizing the sale by Pennsylvania Electric Company to Valley Rural Electric Cooperative, Inc., for
$83,999 of 1.8 miles of Penelec's 23 KV
Harrisonville distribution line (and related rights of way) in Clay and Spring-
field Townships, Huntingdon County, Pennsylvania, supplying Valley's Three Springs delivery point.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 23, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are available for public inspection.

KENNETH F. PLUMS, Secretary.

[FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977]

NOTICES

February 8, 1977.

Take notice that, on or before February 28, 1977, South Georgia Natural Gas Company (South Georgia) tendered for filing Twenty-third Revised Sheet No. 3A to Original Volume No. 1 of its FPC Gas Tariff. The proposed changes would decrease South Georgia's rates $1,165,745.

South Georgia states the instant filing is made pursuant to Section 14 (Pur­chased Gas Adjustment) of the General Terms and Conditions of South Georgia's Original Volume No. 1.

South Georgia is making this filing as a result of the Commission's Order issued January 11, 1977 in Southern Natural Gas Company Docket No. RP75-84. Therefore, South Georgia requests this proposed decrease be made effective February 1, 1977, or such other date as the rate decrease pro­posed by Southern is permitted to go into effect.

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 February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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. PLUMS, Secretary.

[FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977]

NOTICES

February 8, 1977.

Take notice that, on or before February 28, 1977, South Georgia Natural Gas Company (South Georgia) tendered for filing Twenty-third Revised Sheet No. 3A to Original Volume No. 1 of its FPC Gas Tariff. The proposed changes would decrease South Georgia's rates $1,165,745.

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South Georgia is making this filing as a result of the Commission's Order issued January 11, 1977 in Southern Natural Gas Company Docket No. RP75-84. Therefore, South Georgia requests this proposed decrease be made effective February 1, 1977, or such other date as the rate decrease pro­posed by Southern is permitted to go into effect.

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 February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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. PLUMS, Secretary.

[FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977]
NOTICES

SOUTHERN CALIFORNIA EDISON CO.
Issuance of Annual License(s)

FEBRUARY 8, 1977.

On February 4, 1972, Southern California Edison Company, Licensee for the Bored Project No. 382, located on the North Fork of the Kern River, Kern County, California, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 382 was issued effective February 23, 1925, for a period ending February 27, 1975. Since expiration of the original license, the project has been operated under annual license, the most recent of which will expire February 27, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to the Southern California Edison Company.

Take notice that an annual license is issued to the Southern California Edison Company for the period February 28, 1977, to February 27, 1978, or until Federal takeover, or until the issuance of a new license under the Federal Power Act and Commission Regulations thereunder.

TEXAS EASTERN TRANSMISSION CORP.
Order Authorizing Importation of Natural Gas for Specified Period

FEBRUARY 4, 1977.

On February 4, 1977, Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP77-186 an application for an annual license to import natural gas from Mexico. The application was filed under Sections 3 and 16 of the Natural Gas Act for authorization to import natural gas from Mexico to the United States for a period to expire no later than August 1, 1977, for use in its general system supply to meet the needs of its customers, all as more fully set forth in the application.

Texas Eastern has determined that additional gas is needed to assist Texas Eastern in meeting its general needs and appropriate response thereto. This application will be processed in accordance with the terms and conditions of the original license. The application is being processed as provided by the Commission's Regulations.

The Commission orders: (A) Texas Eastern shall be authorized to import natural gas from the Mexican Natural Gas Commission (Pemex) up to 40,000 Mcf per day, commencing as soon as the pipeline is ready to receive such quantities of gas, and (B) Texas Eastern shall pay Pemex $2.25 per Mmbtu at a pressure base of 14.73 psia for such volumes. The Commission notes that the pipeline is ready to receive the gas.

The Commission finds: (1) A natural gas supply emergency situation exists on the Texas Eastern Transmission Corporation system which has substantially diminished Texas Eastern's ability to render natural gas service to its high priority customers.

(2) Approval of the proposed importation of gas by Texas Eastern will materially assist in helping to alleviate the curtailment of high priority customers and is consistent with the public interest.


The Order authorizes Texas Eastern to import natural gas from Mexico for a period to expire no later than August 1, 1977, as necessary in the public interest.

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hereinbefore described and as more fully described in the application in Docket No. CP77-189, upon the terms and conditions outlined below.

(B) The gas imported under the subject arrangement shall not be used to displace alternate fuel capability or cause other gas to displace alternate fuel capability.

(C) Texas Eastern shall file within 10 days after the initial importation of gas herein its contract for the purchase of such gas with Pemex and any other contracts, if any, which are designed to facilitate the transportation of the imported gas to its intended market.

(D) Pursuant to the provisions of Section 1.7 of the Commission's Rules of Practice and Procedure, the following sections of the Commission's Regulations are hereby waived to facilitate issuance of this order. Section 2.1 of the Commission's General Policy and Interpretations, and Section 153.4 of the Commission's Regulations under the Natural Gas Act.

(E) It could become necessary for Texas Eastern to sell this imported gas, as directed by the Commission, to pipelines with a greater need to protect high priority users. This order is conditioned to allow a subsequent evaluation of the relative needs of Texas Eastern and other natural gas pipelines to the subject gas and appropriate action by the Commission relative thereto.

(F) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

By the Commission.

KENNETH F. PLUMES, Secretary.

[FR Doc.77-4717 Filed 2-14-77; 8:45 am]

[FR Doc.77-4713 Filed 2-14-77; 8:45 am]

[FR Doc.77-4715 Filed 2-14-77; 8:45 am]

NOTICES

CONSOLIDATED GAS SUPPLY CORP.
Application To Import Liquefied Natural Gas and Request for Waiver

February 8, 1977.

Take notice that on February 7, 1977, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP77-189 an application pursuant to Section 3 of the Natural Gas Act and Part 153 of the Commission's regulations (18 CFR, Parts 154 and 156) to import liquefied natural gas (LNG) from Algeria to the United States at Everett, Massachusetts, for further transportation by exchange with existing pipelines to the Consolidated system, all as more fully set forth in the application which is on file with the Commission.

Consolidated seeks authorization to import up to 10,000 cubic meters of LNG in two shipments purchased from Sonatrach at Skikda, Algeria, and has arranged for its transportation to the LNG terminals and reevaporator facilities of Distragas of Massachusetts Corporation (DOMAC). The revaporization LNG will be physically delivered through the local distribution facilities of Boston Gas Company, a Division of Boston Edison Company, and will receive gas in exchange with either Tennessee Gas Pipeline Company, a Division of Tenneco Inc., or, alternatively, a combination of Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company. Although oral understandings have been reached, no written contracts have been executed for the purchase from Sonatrach or for ocean transportation.

Consolidated proposes to purchase the subject gas from Sonatrach F.O.B. Skikda, Algeria, at a price of $1.40 per million Btu and has arranged with Hilmar Rekston, a Norwegian corporation, for its transoceanic transportation at a rate of 2.75 per million Btu. DOMAC will charge Consolidated 97.5 cents per million Btu for reevaporating the LNG and domining. The revaporization LNG will be physically delivered through the local distribution facilities of Boston Gas Company, a Division of Boston Edison Company, and will receive gas in exchange with either Tennessee Gas Pipeline Company, a Division of Tenneco Inc., or, alternatively, a combination of Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company. Although oral understandings have been reached, no written contracts have been executed for the purchase from Sonatrach or for ocean transportation.

Consolidated proposes to purchase the LNG at a price of $1.40 per million Btu and has arranged with Hilmar Rekston, a Norwegian corporation, for its transoceanic transportation at a rate of 2.75 per million Btu. DOMAC will charge Consolidated 97.5 cents per million Btu for reevaporating the LNG and domining. The revaporization LNG will be physically delivered through the local distribution facilities of Boston Gas Company, a Division of Boston Edison Company, and will receive gas in exchange with either Tennessee Gas Pipeline Company, a Division of Tenneco Inc., or, alternatively, a combination of Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company. Although oral understandings have been reached, no written contracts have been executed for the purchase from Sonatrach or for ocean transportation.

By the Commission.

KENNETH F. PLUMES, Secretary.

[FR Doc.77-4713 Filed 2-14-77; 8:45 am]

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
NOTICES

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977

Supply situation as follows: On January 18, 1977, Consolidated instituted a force majeure curtailment requiring the curtailment of all industrial loads except plant protection as defined by §2 of our Statements of General Policy and Interpretations (18 CFR 2.78). We noted in the order issued February 5, 1977, in Docket No. RP76-38, that the implementation of the force majeure provision of its tariff resulted in the closing of 1,000 industrial plants throughout Consolidated's service area. More than 130,000 employees are out of work. Consolidated has requested that its commercial and human needs customers such as schools and hospitals reduce consumption. Despite all the measures Consolidated has taken, a grave supply shortage still exists on its system. On February 1, 1977, Consolidated's storage inventories were 50 million Mcf below the normal level for that date. In view of the severity of this condition, Consolidated requested immediate authorization granted by Commission order issued February 8, 1977.

Any person desiring to be heard or to make any protest with reference to said application and request for waiver should on or before February 15, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the regulations under the Natural Gas Act and Section 2.79 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). Due to the severity of the current emergency, good cause exists to allow the shortened notice period. 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.

Amended Petition for Special Relief

FEBRUARY 9, 1977.

Take notice that on February 1, 1977, The Associated Pipe Line Company, 1800 First International Building, Dallas, Texas, 75270, filed a proposed amendment to the above-captioned consolidated docket in the above-captioned special relief proceeding. The amendment pertains to the filing of amended tariffs for the Alcoa plant located in Alcoa, Tennessee, which gas was then being furnished to Alcoa's Warrick Plant, in order to enable Alcoa to offset the effects of curtailment being imposed on the Alcoa Plant by East Tennessee. It is stated that Tennessee would receive such gas at its Greenville, Mississippi, Sales Delivery Point from Texas Gas and would deliver it to East Tennessee. It is further stated that Tennessee would transport and deliver such volumes of fuel and use requirements to Alcoa's Alcoa Plant.

It is stated that Alcoa has agreed to pay Tennessee a monthly transport charge to be determined by multiplying 12.59 cents by the volume of natural gas transported and delivered to East Tennessee, and Tennessee would receive each day for its fuel and use requirements a volume of natural gas equal to the percentage of the volume transported for each day. It is further stated that Alcoa has agreed to pay East Tennessee a monthly transport charge to be determined by multiplying the rate of 25.0 cents per Mcf by the volume of natural gas actually transported and delivered by East Tennessee to Alcoa, and East Tennessee would retain a daily volume determined by multiplying the volume delivered by Tennessee to Alcoa for the account of Alcoa for such day for fuel and use requirements.

It is stated that such transportation service by Tennessee and East Tennessee would be for a period not to exceed 30 days from the date of initial delivery, which period commenced January 28, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977.

Tennessee and East Tennessee state that this transportation service would be made to the extent operating conditions permit through the utilization of existing facilities. Any person desiring to be heard or to make any protest with reference to said application should file with the Commission its 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.

[FR Doc.77-4900 Filed 2-14-77; 2:18 pm]

SOUTHERN UNION SUPPLY CO. AND EL PASO NATURAL GAS CO.

Amended Petition for Special Relief

[FR Doc.77-4900 Filed 2-11-77:77:2:18 pm]

[FR Doc.77-4900 Filed 2-14-77; 2:18 pm]

[FR Doc.77-4900 Filed 2-14-77; 2:18 pm]

[FR Doc.77-4900 Filed 2-14-77; 2:18 pm]

[FR Doc.77-4900 Filed 2-14-77; 2:18 pm]

[FR Doc.77-4900 Filed 2-14-77; 2:18 pm]
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 P. PLUMB, 
Secretary.

[FR Doc.77-4842 Filed 2-11-77;2:18 pm]

[Docket No. CP76-322]

TENNESSEE GAS PIPELINE CO., EAST TENNESSEE NATURAL GAS CO. 
Petition to Amend

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2311, Houston, Texas 77001, and East Tennessee Natural Gas Company (East Tennessee), P.O. Box 18343, Knoxville, Tennessee 37919, filed in Docket No. CP76-322 a petition to amend the Commission’s order issued pursuant to Section 7(c) of the Natural Gas Act on June 30, 1976 (55 FPC — ), so as to authorize Tennessee to transport and deliver up to 525 Mcf of natural gas per day to Tennessee Natural Gas Lines, Inc. (Tennessee Natural) for the account of Stauffer Chemical Company (Stauffer), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that it is presently authorized to transport up to 1,700 Mcf of gas per day to East Tennessee for the account of Stauffer for utilization by Stauffer at its Mt. Pleasant, Tennessee, plant.

It is stated that Stauffer also operates a plant in Nashville, Tennessee, served by Nashville Gas Company (Nashville) which is served by Tennessee Natural, a regulated natural gas company in Tennessee. It is further stated that in the latter part of January and early February 1977, Stauffer has been curtailed down to 67 Mcf per day by Nashville, and as a result has lost 80 percent of the plant’s daily production and exposed much of the equipment to damage from freezing.

It is stated that pursuant to a letter of the Commission dated January 28, 1977, Tennessee and Tennessee Natural requested authorization to transport up to 325 Mcf of gas per day, now being delivered to Stauffer’s Mt. Pleasant plant, to Stauffer’s Nashville plant. Tennessee states that it would deliver such volumes to Tennessee Natural at its Main Line Valve 863-1-4-9.5 miles which would in turn deliver equivalent volumes to Nashville that would be available to Stauffer, during the period ending March 31, 1977. Tennessee also states that such deliveries would be made pursuant to its Rate Schedule 7-34 and it would continue to receive volumes in excess of the transportation volumes for its fuel and use requirements, which volumes would equal 9.2 percent of the transportation volumes.

It is stated that the delivery commenced February 2, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977. Tennessee states that no new or additional facilities are required to effectuate the transportation service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 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 (16 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission’s Rules.

KENNETH P. PLUMB, 
Secretary.

[FR Doc.77-4843 Filed 2-11-77;2:18 pm]

[Docket No. CP76-267]

TEXAS GAS TRANSMISSION CORP. 
Petition to Amend

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP 76-267 a petition to amend the Commission’s order of November 4, 1976 (56 FPC —), amending prior Commission orders issued May 24, 1976 (55 FPC —), and August 31, 1976 (56 FPC —), and docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Aluminum Company of America (Alcoa), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued on November 4, 1976, amending prior Commission orders issued May 24, 1976, and August 31, 1976, it is authorized to transport up to 7,937 Mcf of gas per day, on an interruptible basis, for Alcoa, an existing industrial customer of Southern Indiana Gas and Electric Company (SIGECO), one of Petitioner’s resale customers. It is stated that Petitioner receives such volumes in Claypool, Indiana, and delivers the gas to SIGECO at existing points of delivery for the account of Alcoa. Alcoa, it further states, pays Petitioner 15.01 cents per Mcf for volumes delivered to SIGECO for use in the operation of its pipeline system necessary to deliver the volume of the volumes of natural gas, up to 3,000 Mcf per day, presently being delivered to SIGECO. Petitioner proposes to transport and deliver such gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), at a charge of 7.33 cents for each Mcf of natural gas delivered to Tennessee for Alcoa’s account, and Petitioner would retain a volume of natural gas equal to 1.6 percent above the delivered volume for use in the operation of its pipeline system necessary to deliver the volume of gas to Tennessee.

It is stated that Petitioner would divert volumes for Alcoa’s account, for a period not to exceed thirty days, from the date of initial delivery, which period commenced January 28, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977. Petitioner states that no new facilities are required to effectuate the diversion of volumes for the account of Alcoa.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 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 (16 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission’s Rules.

KENNETH P. PLUMB, 
Secretary.

[FR Doc.77-4845 Filed 2-11-77;2:18 pm]

[Docket No. CP76-416]

TRANSCONTINENTAL GAS PIPE LINE CORP. 
Petition to Amend

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Huntington, Texas 77061, filed in Docket No. CP76-416 a petition to amend the Commission’s order of December 23, 1976 (56 FPC — ), issued in the instant docket (CP76-267), to authorize the delivery by East Tennessee Natural Gas Company (East Tennessee) to Alcoa’s account of Alcoa’s, Alcoa, Tennessee, plant. It is further stated that Alcoa would pay Petitioner a charge of 7.33 cents for each Mcf of natural gas delivered to Tennessee for Alcoa’s account, and Petitioner would retain a volume of natural gas equal to 1.6 percent above the delivered volume for use in the operation of its pipeline system necessary to deliver the volume of gas to Tennessee.

It is stated that Petitioner would divert volumes for Alcoa’s account, for a period not to exceed thirty days, from the date of initial delivery, which period commenced January 28, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977. Petitioner states that no new facilities are required to effectuate the diversion of volumes for the account of Alcoa.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 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 (16 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission’s Rules.

KENNETH P. PLUMB, 
Secretary.

[FR Doc.77-4846 Filed 2-11-77;2:18 pm]

[Docket No. CP76-416]
NOTICES

PETITIONER states that it is presently transporting on an interruptible basis for South Jersey, one of its resale customers served under its Rate Schedule C5-3, quantities of natural gas which South Jersey purchases from its production affiliate South Jersey Exploration Company (Exploration) in the East Point Blue Field, Evangeline Parish, Louisiana.

It is stated that Exploration now has production also in the East Hordes Creek Field, Goldd Coast, Texas; the South Gist Field, Newton County, Texas; the South Tomball Field, Harris County, Texas; and the North Jefferson Island Field, Iberia Parish, Louisiana, which would be sold to South Jersey.

It is asserted that by letter agreement dated December 28, 1976, by Petitioner and South Jersey and have amended their transportation agreement dated May 7, 1976, as to provide for the transportation of the following estimated maximum daily quantities of gas from such additional sources:

<table>
<thead>
<tr>
<th>Field</th>
<th>Maximum Quantity (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Point Blue Field</td>
<td>2,000</td>
</tr>
<tr>
<td>East Hordes Creek Field</td>
<td>3,000</td>
</tr>
<tr>
<td>South Gist Field</td>
<td>1,500</td>
</tr>
<tr>
<td>South Tomball Field</td>
<td>200</td>
</tr>
<tr>
<td>North Jefferson Island Field</td>
<td>1,400</td>
</tr>
</tbody>
</table>

Petitioner states that no additional facilities would be required to receive from these companies due to existing interconnections between the respective systems.

It is stated that with respect to the East Hordes Creek Field, Petitioner proposes to construct and operate an additional meter and regulator station at Mile Post 80.14 on its 24-inch McMullen Lateral, Goldd County, Texas, in order to receive gas for the account of South Jersey, and would be reimbursed by South Jersey for the actual cost of such facility estimated at $32,500.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest with the Federal Power Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Commission's General Policy and Interpretations pursuant to Section 2.78(a) of the Commission's General Policy and Interpretations pursuant to Section 2.78(b).

In support of its petition for relief from curtailment, Petitioner contends that (1) although PGW is now serving, in general, only Priority One loads, PGW has made exceptions; (2) the 1,500 Mcf of natural gas per day will be delivered to Petitioner on a monthly basis and 75 Mcf on peak days under a firm service contract for the duration of the period of curtailment, or in any event until May 31, 1977.

Take notice that on February 7, 1977, Janesville Cylinder Corporation, Philadelphia, Pennsylvania, filed a petition for waiver of Section 2.78(a) of the Commission's General Policy and Interpretations pursuant to Section 2.78(b) in order to resume its production under Department of Defense contracts.

Petitioner, a natural gas customer of PGW, is a manufacturer of formed metal parts. It has been a Priority Two user of natural gas on the basis of having time critical industrial requirements for process needs.

It requests that 1,500 Mcf of natural gas per day (with a possibility of up to 9,000 Mcf per day) at a price of $2.45 per Mcf be delivered to Texas Gas Transmission Corporation from United Gas Pipe Line Company (United by Long's Trustee Corporation (Texas Gas) for delivery to Texas Gas Transmission Corporation from United Gas Pipe Line Company (United by Long's

Take notice that on January 10, 1977, Venture Gas Company (Venture), Rimersburg, Pa. 16348, filed in Docket No. RPT77-24 a petition for special rate relief on the gas sold to Venture by Texas Gas Transmission Corporation from the Commission's Rate Schedule


Any person desiring to be heard or to make any protest with reference to said petition should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest with the Federal Power Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Commission's General Policy and Interpretations pursuant to Section 2.78(a) of the Commission's General Policy and Interpretations pursuant to Section 2.78(b).

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as to costs in the general area of the proposed sale. However, that information does not establish Long's costs for this particular well nor does it demonstrate that Long could realize a price of $2.45 per MMBtu in the intrastate market. Thus, Memphis has failed to demonstrate that the proposed price is fair and equitable as required by Pub. L. 95-52.

The order to consummate the proposed sale on the condition that the price not exceed $2.35 per MMBtu. This authorization is subject to the submission of information by Rusk supporting the proposed transportation charge of $0.35 per MCF. If Long determines to consummate the proposed sale on the conditions set forth above, he shall report to the Administrator within seventy-two (72) hours of the commencement of deliveries.

This order shall be served upon Memphis Light, Gas and Water Division and B. V. Long, et al. Trustee. The order shall also be published in the Federal Register.

This order is subject to the continuing authority of the Administrator under Pub. L. 95-52 and the rules and regulations which may be promulgated thereunder.

RICHARD L. DUNHAM,
Administrator.
FEBRUARY 11, 1977.

[FR Doc. 77-4677 Filed 2-14-77; 10:55 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Federal Council on the Aging
MEETING
The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-20) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 93-483 that the Federal Council on the Aging will meet on March 6, 1977 from 9:30 a.m. to 5:30 p.m. In Room 401B and on March 9, 1977, from 9:30 a.m. to 5 p.m. In Room 5051, HEW-North Building, 330 Independence Ave., S.W., Washington, D.C. 20201. The agenda will consist of: Follow-up to FCA Benefits Study; Review of FCA Actions on Health Care for the Elderly; Review of Roles of Federal Units on Aging; Review of Federal Budget Proposals Affecting the Elderly; Review of Frail Elderly Projects; 1978 Amendments to Older Americans Act; Status of National Meals on Wheels Legislation; Status of Assets Project; Establishment of Social Security Advisory Council; Status of Minority Research Project and Status of Health Manpower Project.

This meeting will be open for public observation.


CHELONIE TAVANI,
Executive Director.
FEBRUARY 9, 1977.

[FR Doc. 77-4677 Filed 2-14-77; 7:45 am]

Office of Education
NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION
Meetings
AGENCY: National Advisory Council on Indian Education.
ACTION: Notice.
SUMMARY: The notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Indian Education. It also describes the functions of the Council.

Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Meetings: March 4, 1977, 8:30 a.m. to 4:30 p.m. Closed, March 5, 1977, 8:30 a.m. to 4:30 p.m. and March 6, 1977, 8:30 a.m. to 3:00 p.m.

ADDRESS: 425 13th Street, N.W., Room 326, Washington, D.C. and March 5 & 6, 1977, FOB 6, Room 1134, 460 Maryland Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of P.L. 92-318, (20 U.S.C. 1221g).

The Council is directed to:
(1) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative procedures and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (P.L. 81-874), as added by this Act and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act and with respect to adequate funding thereof;
(2) Review applications for the assistance under Title III of the Act of September 30, 1950 (P.L. 81-874), as added by this Act, Section 810 of Title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act and Section 314 of the Adult Education Act, as added by this Act, and make recommendations to the Commissioner with respect to their approval;
(3) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit and disseminate the results of such evaluations;
(4) Provide technical assistance to Indian educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;
(5) Assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (P.L. 81-874), and
(6) To submit to the Congress not later than March 31 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults can participate from which they can benefit, which report shall include statement of the National Advisory Council's recommendations to the Commissioner with respect to the funding of any such programs.

The Council, pursuant to the authority contained in Section 441(a) of P.L. 92-318, (20 U.S.C. 1221b), shall submit a list of nominees from which the Commissioner of Education shall appoint a Deputy Commissioner of Indian Education.

The meeting on March 4, 5, 6, 1977, will be open to the public beginning at 8:30 a.m. and ending 4:30 p.m. each day, except as otherwise noted in the next paragraph of this notice. This meeting will be held at the Pennsylvania Building and FOB 6, Washington, D.C.

The proposed agenda includes:
(1) Executive Director's Report.
(2) Action on previous meeting minutes.
(3) Committee reports.
(4) Plans for NACIE IV Annual Report.
(5) Review of NACIE FY '77 Budget.
(6) Committee reports.
(7) Plans for future NACIE activities.
(8) Regular Council Business.

The session on Friday, March 4, 1977, from 8:30 a.m. to 4:30 p.m. will be closed to the public to review applications and hold interviews with the applicants for the position of Executive Director of the National Advisory Council on Indian Education which must be held in confidence, under the authority of Section 10(d) of the Federal Advisory Committee Act (P.L. 92-483) and under the exemptions contained in the Freedom of Information Act, 5 U.S.C. (5 U.S.C. Title 5, U.S.C. 1221g. (30 U.S.C. 1221g), Title 5 U.S.C. (Pub. L. 9023), 45 CFR 5.71(a) and 5.71(c). Discussion of the applications and interviews will include consideration of the qualifications and fitness of the candidates and will be attended by members of the Council upon many matters which would constitute a serious invasion of privacy if conducted in an open session.

The meeting of the Full Council on March 5 & 6, 1977, will be open to the public, but because of the use of Fed-
eral space on Saturday and Sunday, anyone wishing to attend the meeting should inform the Council's staff office (202-376-8882) no later that February 25, 1977, to be put on the list to enter the Federal office building.

Records shall be kept of all Council proceedings and shall be available 14 days after the meeting to the public at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Washington, D.C. 20004.


STUART A. TONEHAN,
Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc.77-4656 Filed 2-14-77;8:45 am]

Food and Drug Administration
(Docket No. 76P-0344)

MEDICAL DEVICES

Opportunity for Oral Hearing on Proposed Action on State of California Application for Exemption From Preemption of Medical Device Requirements

The Food and Drug Administration (FDA), announces an opportunity for oral hearing on its proposal on the State of California application for exemption from preemption of medical device requirements. Interested persons may request an oral hearing on or before March 17, 1977.

Elsewhere in this issue of the Federal Register, the Commissioner of Food and Drugs proposes to grant the State of California Department of Health an exemption from Federal preemption for certain State laws and regulations pertaining to medical devices, allowing 60 days for comment. To enable expeditious review of any request for an oral hearing, the Commissioner has limited the period for requesting an oral hearing to the first 30 days of the comment period. Upon a determination that an oral hearing should be held, the Commissioner shall publish notice in the Federal Register of the time, date, and place of the hearing. The procedures to govern any such oral hearing are those applicable to a public hearing before the Commissioner under Subpart E of Part 2 (21 CFR Part 2, Subpart E) published in the Federal Register of November 2, 1976 (41 FR 48256).

Interested persons may on or before March 17, 1977, submit requests for an oral hearing on any subject matter to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. All requests should be identified with the Hearing Clerk docket number found in brackets in the heading of this notice.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360k)) and under authority delegated to the Commissioner (21 CFR 5.1) (reorganization published in the Federal Register of June 15, 1976 (41 FR 24262)).


SHERWIN GARDNER,
Acting Commissioner, Food and Drugs.

[FR Doc.77-4656 Filed 2-14-77;8:45 am]

Office of the Secretary
NATIONAL ADVISORY COUNCIL ON SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Meeting

The National Advisory Council on Services and Facilities for the Developmentally Disabled was established by Section 133(a)(1) of Pub. L. 91-517, which was signed on October 30, 1970, to advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by him in the implementation of the Act and study and evaluate progress authorized by the Act with a view to determining the purposes for which they were established.

Notice is hereby given, pursuant to Pub. L. 92-463, that the National Advisory Council on Services and Facilities for the Developmentally Disabled will hold a meeting on March 2, 3, and 4, 1977. The meeting will be held in the BMH South Portion Building, Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C. from 9:00 a.m. to 5:00 p.m. Agenda:

Remarks by the Acting Executive Secretary for Human Development: Research and Evaluation Strategy; Training and Technical Assistance Strategy; Goals and Objectives of the Council; Election of Vice-Chairman and Council Organizations: Protection and Advocacy; and discussion of State and Regional Concerns.

This meeting is open for public observation.

Further information on the Council may be obtained from Mr. Francis X. Lynch, Executive Secretary, National Advisory Council on Services and Facilities for the Developmentally Disabled, Room 3070, Mary Switzer Building, 330 "G" Street, S.W., Washington, D.C. 22620, telephone 202-245-0335.

FRANCIS X. LYNCH,
Executive Secretary.

FEBRUARY 9, 1977.

[FR Doc.77-4676 Filed 2-14-77;7:45 am]

ANALYSIS OF ELIGIBLE POPULATIONS FOR FEDERAL POVERTY PROGRAMS UNDER ALTERNATIVE DEFINITIONS OF POVERTY

Program Results

Pursuant to section 906 of the Community Services Act of 1974 (Pub. L. 93-644), 42 U.S.C. 2966, this agency announces the findings reported as a result of activities associated with an HEW project entitled "Analysis of Eligible Populations for Federal Poverty Programs Under Alternative Definitions of Poverty."

This report compares the demographic characteristics of two populations—those eligible for welfare and those who are poor. The "welfare" population consists of those eligible for Aid to Families with Dependent Children (AFDC) program or the Supplemental Security Income (SSI) Program. The "poverty" population consists of those defined as poor according to the official statistical poverty measure. These analyses considered "poverty" populations under alternative poverty measures. The analyses focus on what percentage of the poor is eligible for welfare and what percentage of welfare eligible is non-poor.

The Census Bureau's March 1975 Current Population Survey, a sample conducted in the study, TRIM, a microsimulation model, was used to statistically simulate the welfare eligible population and compare this to the "poor" populations. Data were obtained from the Census Population Surveys of March 1968, 1973 and 1975 for income years 1967, 1972 and 1974.

The welfare eligibles and poverty populations are different as a result of differences in concept and because the welfare eligibility dollar levels and the official poverty lines are not adjusted at the same rate each year. There is some overlap between these populations. According to the analyses, in 1974 there were about 24.3 million poor persons and 24.0 million persons eligible for welfare. About 13.0 million were both poor and eligible for welfare.

The percent of poor families eligible for public assistance increased from 53 percent in 1967 to 65 percent in 1974. The percent of poor unrelated individuals, who were eligible for welfare decreased between 1967 and 1974. But 13 percent of unrelated individuals who were eligible for welfare were nonpoor in 1967 and 30 percent in 1974.

In 1974, using the current measure, 92 percent of poor families headed by a woman were eligible for welfare—but only 42 percent of poor families headed by a man. Eighty-one percent of black families—and 58 percent of white families—that were poor were eligible for welfare. Fifty-three percent of working heads, who were poor, were eligible for welfare. There was considerable geographic variation: 58 percent of poor families in the South and 75 percent of poor families in the Northeast were eligible for welfare.

A copy of this report will be filed with and will be available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virgina 22151.

Dated: February 8, 1977.

GERALD BUITEN,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc.77-4726 Filed 2-14-77;7:45 am]
NOTICES

DESIGN OF ANALYTIC MODEL AND SURVEY INSTRUMENT FOR DATA ON SINGLE-PARENT HOUSEHOLDS FOR FOLLOW-ON SIE SURVEY

Program Results


There were two products associated with this project. The first is a questionnaire designed for use in a proposed low-on survey of single heads of families identified by the Bureau of the Census' 1976 Survey of Income and Education (SIE). In that it was designed to supplement and complement data produced by the SIE, the survey instrument alone was not intended to be comprehensive. It might, however, serve as a model for those intending to study single-parent families. The second product includes the following types of questions about the single head of family: Family history; marital history; life situation before and after becoming a single head of family (including education, employment, child care arrangements, income and expenses, living arrangements, and public program participation); assistance history; current financial resources (including payments received as a result of becoming a single-parent, e.g., child support); current employment, expenses and time use; and perceived needs. The second product is an analytic model. This document sets out a framework for the analysis of the data which would be generated by the survey instrument in combination with the SIE. It should be reiterated that the products of this study were limited to a questionnaire and an analytic model; consequently, no data were generated by this effort.

Copies of both products will be available upon request from the Women's Action Program, DHEW, Room 438F South Portal Building, 209 Independence Avenue, SW., Washington, D.C. 20201.


GERALD H. BRIETEN, Acting Assistant Secretary for Planning and Evaluation.

[RFR Doc. 77-4724 Filed 2-14-77; 8:45 am]

RURAL INCOME MAINTENANCE EXPERIMENT

Program Results

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-84) 42 U.S.C. 2946, this agency announces the results of an HEW project entitled, "The Rural Income Maintenance Experiment". The "Summary Report: Rural Income Maintenance Experiment" reports the findings of a three-year experiment whose main purpose was to determine whether income-conditioned cash payments would cause low-income families headed by able-bodied adult males to work less or to drop out of the labor force entirely, and also to measure the size of any such response.

The study was performed by the Institute for Research on Poverty at the University of Wisconsin and involved more than 800 randomly-selected low-income families in rural areas of Iowa and North Carolina.

The effects of the Rural Experiment were measured by comparing the behavior of families in an experimental group, to whom various benefit formulas were assigned, with the behavior of a control group which received no benefits. The benefit formulas were structured in a negative income tax and consisted of a basic benefit, the minimum level of income which would consist of any other income; and an implicit tax rate, the rate at which the benefit would be reduced as other income increased.

The experiment showed that in rural families whose heads worked primarily for wages, experimental payments had very little effect on husbands' hours of work. Husbands' labor force participation was not affected. All but two of wage earners, however, were much less likely to work as a result of the experiment. The employment rate of wives in the experimental group averaged 26 percent lower than that of similar controls.

Total hours of work for farm families receiving benefits remained similar to controls or were slightly lower, and some evidence appears of a shift in hours from wage work to work on the farm for members of experimental families. Profits and output sold among the experimental group were lower than among similar controls by differentials ranging from 8 to 25 percent.

In addition to the analysis of labor market behavior, the study also measured other effects of the payments on recipients. Nutrition for children improved for North Carolina experimental families relative to controls. The school performance of North Carolina grade school children also improved as a result of the experimental benefits. But the most social and psychological characteristics of recipients were unaffected by the experimental payments.

A copy of this report will be filed and available as soon as possible from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151, and from the Publications Institute, Institute for Research on Poverty, Social Science Building, University of Wisconsin, Madison, Wisconsin 53706.


GERALD BRIETEN, Acting Assistant Secretary for Planning and Evaluation.

[RFR Doc. 77-4725 Filed 2-14-77; 8:45 am]

NOTICES

Food and Drug Administration

[Para No. 76N-0379]

PLASTIC BOTTLES FOR CARBONATED BEVERAGES AND BEER

Environmental Impact Determination

The Commissioner of Food and Drugs is giving notice of his determination to take no action at this time based upon his authority under the National Environmental Policy Act (NEPA) with respect to food additive regulations permitting the use of certain plastic bottles for carbonated beverages and beer.

In a future issue of the Federal Register the Commissioner will stay the food additive regulations permitting the use of acrylonitrile copolymers in the fabrication of plastic bottles for carbonated beverages and beer on the basis of recently acquired information regarding its safe use in or as articles intended for use in contact with food. This information, the results of a teratology study required by the interim regulations for acrylonitrile copolymers published in the Federal Register of June 14, 1976 (41 FR 23491), and the preliminary results of an ongoing chronic feeding study, indicate that the use of these plastic bottles for carbonated beverages and beer should be discontinued at the present time. The Commissioner will also shortly propose to amend the interim regulations for acetone, ethanol, and isopropanol in all food contact applications. The proposed amendments would reduce the amount of acrylonitrile monomer permitted to migrate to food from the 1.3 part per million to 50 parts per billion.

BACKGROUND

In a notice published in the Federal Register of September 7, 1976 (41 FR 23491), the Commissioner concluded that preparation of an Environmental Impact Statement (EIS) was a necessary prerequisite for Food and Drug Administration (FDA) action on substances used or intended for use in the fabrication of plastic bottles for carbonated beverages and beer. This notice indicated that an Environmental Impact Analysis Report (EIAR) containing the information prescribed by § 6.1(g) (21 CFR 6.1(g)) and § 121.51 (c) and (h) (21 CFR 121.51 (c) and (h)) was to be submitted by all persons marketing articles covered by § 6.1(g) (21 CFR 6.1(g)) and § 121.51 (c) and (h) within 90 days of the publication of this notice. The Commissioner, in a notice published in the Federal Register of March 15, 1973, for substances used or intended for use in the fabrication of plastic bottles for carbonated beverages and beer, ordered that preparation of an Environmental Impact Statement (EIS) was a necessary prerequisite for Food and Drug Administration (FDA) action on substances used or intended for use in the fabrication of plastic bottles for carbonated beverages and beer.

A notice of availability of a draft EIS was published in the Federal Register of April 14, 1976 (40 FR 16708), requesting comments by June 13, 1976. The Council on Environmental Quality (CEQ) issued a further notice of availability published in the Federal Register...
NOTICES

of June 13, 1975 (40 FR 35250), which provided for an additional 45-day public comment period ending July 29, 1975. Comments were received from Federal and state agencies, consumers, environmental groups, private companies, and trade associations. Comments received after the comment period had ended were considered in the final analysis. The notice of availability of the final EIS was published in the Federal Register of October 5, 1976 (41 FR 43944). In the Federal Register of October 22, 1976 (41 FR 46424), CEQ published its notice of availability of the final EIS. The final EIS analyzed the potential environmental impact of plastic bottles for carbonated beverages and beer but did not indicate the FDA position on pending petitions and existing regulations. The notice of availability indicated that FDA's decision on such petitions and existing regulations would be announced in the Federal Register not earlier than 30 days following the availability of the final EIS.

The draft EIS stated the agency's position, since modified, that adverse environmental impact is not a ground for revocation denial of a food additive petition under section 409 of the Federal Food, Drug, and Cosmetic Act (the act), the section of the act governing approval or denial of food additives. The Commissioner indicated that, in the Commissioner's view, Congress had specified in section 409(c) of the act the exclusive factors to be considered in approving, denying, or revoking the decision of the agency with respect to the use of a food additive petition. This notice therefore describes the factors considered by the Commissioner in deciding to take no action at this time based upon his authority under NEPA with respect to food additive regulations permitting the use of plastic bottles for carbonated beverages and beer, and specifies the weight accorded environmental factors in reaching that decision.

Plastic Barrier Bottles for Carbonated Beverages and Beer

A number of food additive petitions have been submitted to FDA requesting that regulations be amended, and regulations have been modified to permit the use of certain polymeric materials with special gas barrier properties in food contact containers. These special characteristics make the materials physically suitable for packaging carbonated beverages and beer.

The resin currently most suitable for such containers are acrylonitrile (nitrile) and polyethylene terephthalate (polyester). The final EIS identifies these materials, and the potential environmental impact of conventional blow-molded plastic bottles incorporating these substances as well as the polyester film pouch and the non-blow-molded nitrile plastic bottle. This notice, however, is not applicable to nitrile bottles, because the food additive regulations permitting their use for carbonated beverages have been stayed. This notice also does not discuss the decision of the agency with respect to the polyester film pouch in detail, because it is unlikely that the evidence will be widespread use of the pouch for carbonated beverages and beer in the United States in the near future, and because the final EIS establishes that this container presents a comparatively lesser risk of adverse environmental impact than the conventional blow-molded plastic bottles.

Approval of Plastic Bottles Under Section 409 of the Act

The final EIS presents the basis for deciding whether the proposed action on the use of plastic barrier bottles is consistent with the requirements of NEPA. The final EIS identifies the reasons why the agency concluded that the use of plastic bottles is consistent with the requirements of NEPA.

Plastic barrier bottles for beverages are subject to several approved and pending food additive petitions under section 409 of the act (21 U.S.C. 348) because, by virtue of the migration of certain of their component substances into the beverages they contain, they are considered to be a component of any food product. Section 409 of the act establishes the criteria that must be satisfied before any new food additive can be used in any food product. Under paragraph (b) of that section, a petition must be filed with the Secretary of Health, Education, and Welfare to establish the safety of any new food additive under which such additive may be safely used." (21 U.S.C. 348(b)(1)). The types of safety data and other information that are required to be submitted as part of each petition are prescribed in 21 U.S.C. 348(b)(2) (A)-(E). Within 30 days after the petition is filed, the Secretary is required to publish a notice of the proposed regulation (21 U.S.C. 348(b)(5)).

If the Secretary, after reviewing the food additive petition, determines that the additive can be used safely in food products, then the agency has the statutory authority under NEPA which has been amended, § 6.1(a) (3), indicated that, in the Commissioner's view, the non-acrylonitrile plastic bottles, because by virtue of the migration of certain of their component substances into the beverages they contain, they are considered to be a component of any food product. Section 409 of the act establishes the criteria that must be satisfied before any new food additive can be used in any food product. Under paragraph (b) of that section, a petition must be filed with the Secretary of Health, Education, and Welfare to establish the safety of any new food additive under which such additive may be safely used." (21 U.S.C. 348(b)(1)).

The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)). The Secretary can refuse to issue a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(e)(1)(A)).
concludes that the introduction of plastic bottles will increase litter to the extent that plastic bottles displace refillable glass bottles and expand the total nonrefillable container market. In addition, the use of smaller size plastic bottles, whether they displace refillables or other throwaways, will result in the noticeable presence of plastic bottles in litter. Consequently, the use of plastic bottles for carbonated beverages and beer will have at least as great an adverse environmental impact as litter as do other throwaway containers.

Increased volume of solid waste. Like other throwaway beverage containers, plastic bottles for carbonated beverages and beer are expected to contribute to the increasing volume of solid waste. As the final EIS points out, pages 62 to 65, there are some differences between plastic bottles and other containers with respect to disposal via land-fill, open dump, incineration, combustion, and pyrolysis, but the overall environmental impact resulting from the disposal of each type of container is much the same. The final EIS recognizes, however, that to the extent that nonrefillable plastic bottles replace refillable glass bottles there will be an increase in the volume of solid waste.

Increased manufacturing effluents. Appendix A of the final EIS presents a detailed breakdown of the estimated requirements for raw materials and the expected effluents by-type and volume for plastic barrier bottles and for other container types. This shows that there is little demonstrated difference in terms of manufacturing effluents between conventionally blow-molded plastic bottles and other containers, but that refillable glass bottles present a distinct overall advantage in terms of environmental pollution produced during the manufacturing process. Therefore, the final EIS recognizes that to the extent that refillable bottles displace plastic bottles, there will be an increase in environmental pollution resulting from manufacturing effluents.

Risk of exposure to toxic gases. In addition to the adverse effects discussed above, the final EIS, pages 76 to 78, discusses the concern that the combustion of nitrile plastic bottles under certain conditions could expose the public to toxic gases such as hydrogen cyanide, acrylonitrile, and acrolein. The final EIS concludes that, although the likelihood of exposure to these gases in dangerous concentrations may be slight, these conditions do not exist with noncombustible bottles and cans. Available information suggests that polyester resins are less likely than nitrile to produce noxious emissions. The risk of exposure to toxic gases upon the combustion of the bottles no longer constitutes a potential adverse environmental impact, in view of the agency's intention to stay the food additive regulations permitting the use of plastic bottles for carbonated beverages and beer.

Decision to take no action. In determining whether to elect an alternative, the Commissioner was required to decide the weight to be accorded the environmental factors. The final EIS and more particularly the most significant environmental factors referred to above. The Commissioner acknowledges the difficulty of evaluating interests such as energy conservation and reduction of litter under a statutory provision that limits the agency's range of consideration to safety and functionality. Nevertheless, this evaluation is guided by the Court's opinion in "Environmental Defense Fund, Inc. v. Mathews," supra, which teaches that NEPA provides supplementary authority to the agency but does not require that environmental consideration be favored over other factors. Applying that principle, the Commissioner concludes that the beneficial and adverse environmental impacts identified in the final EIS are not of sufficient magnitude to outweigh the benefits to energy conservation and reduction of litter under a statutory provision that limits the agency's range of consideration to safety and functionality. Nevertheless, this evaluation is guided by the Court's opinion in "Environmental Defense Fund, Inc. v. Mathews," supra, which teaches that NEPA provides supplementary authority to the agency but does not require that environmental consideration be favored over other factors.
NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[DOCKET NO. NFD-431; FDAA-3028-EM]

INDIANA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Indiana dated February 2, 1977, and amended on February 3, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 2, 1977:

The Counties of:

Adams  Randolph  Blackford  Ripley
Elkhart  Rush  Jennings  Switzerland
Kosciusko  Warren  Lake  Whitley

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: February 8, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.]

INSTRUCTIONS TO DEVELOPER

Federal Disaster Assistance Administration

[DOCKET NO. NFD-422; FDAA-3330-EM]

MICHIGAN

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Michigan dated February 5, 1977, is hereby amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 5, 1977.

The County of:

Hillsdale

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)


THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.]

NEW JERSEY

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-293; and by virtue of the Act of May 22, 1974, entitled “Disaster Relief Act of 1974” (88 Stat. 149); notice is hereby given that on February 8, 1977, the President declared a major disaster as follows:

I have determined that the situation in certain areas of the State of New Jersey resulting from ice conditions on the Delaware Bay and its tributaries and along the Atlantic Coast, beginning about December 30, 1976, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-87. I therefore declare that such a major disaster exists in the State of New Jersey.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11785, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Thomas R. Casey, FDAA Region II, to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of New Jersey to have been adversely affected by this declared major disaster:

The Counties of:

Atlantic  Monmouth
Cape May  Ocean
Cumberland  Salem

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: February 8, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

Office of Interstate Land Sales Registration

[DOCKET NO. N-77-714]

CARDINAL HARBOUR

Hearing

In the matter of: Cardinal Harbour, Fourth Avenue-Irvin, Joint Venture and D. Irving Long, Authorized Agent, 76-2556-1S OILSR No. 0-4438-30-81. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), notice is hereby given that:

1. Cardinal Harbour, Fourth Avenue-Irvin, Joint Venture and D. Irving Long, Authorized Agent, and others, hereinafter referred to as “Respondent,” being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (16 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 8, 1976, which was sent to the developer pursuant to 15 U.S.C. 1708(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer...
NOTICES

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EVERGREEN HIGHLANDS

In the matter of: Evergreen Highlands Units 1-4, Evergreen Estates, Inc. and Roy R. Romer, President and Director, 70-305-3S OILSR No. 0-1936-44-103 and (A). Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby given that:

1. Evergreen Highlands Units 1-4, Evergreen Estates, Inc. and Roy R. Romer, President and Director, authorized agents and officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued October 12, 1976, which was sent to the developer pursuant to 15 U.S.C. 1708(d), 24 CFR 1710.45(b) (1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Cardinal Harbour located in Oldham County, Kentucky, contain untrue statements of material fact or omit state material facts required to be stated therein or necessary to make the statements therein not misleading.


3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby ordered, that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington, D.C. on February 23, 1977 at 2:00 p.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building Room 10150, Washington, D.C., on or before January 27, 1977.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b) (1). This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1730.440.

By the Secretary.

DATED: December 6, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4666 Filed 2-14-77; 8:45 am]

[Docket No. N-77-712]

PASO de SOL

Hearing

In the matter of: Paso de Sol, Desetundra Development Company and William E. Bittner, President, 76-349-1S OILSR No. 0-2826-02-584; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby given that:

1. Paso de Sol, Desetundra Development Company and William E. Bittner, President, authorized agents and officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Registration Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 8, 1976, which was sent to the developer pursuant to 15 U.S.C. 1708(d), 24 CFR 1710.45(b) (1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Friendly Acres, located in Pike County, Pennsylvania, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.


3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby ordered, that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW, Washington, D.C. on March 10, 1977 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building Room 10150, Washington, D.C. on or before February 14, 1977.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45 (b) (1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1730.440.

By the Secretary.

DATED: December 17, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4667 Filed 2-14-77; 8:45 am]

[Docket No. N-77-710]
NOTICES

90-448 (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 9, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b) (1), and 1720.125. Informed the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Paso del Sol located in Yavapai County, Arizona, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.


3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), it is hereby ordered, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing shall be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on March 16, 1977 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., on or before February 22, 1977.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b) (1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: December 17, 1976.

By the Secretary.

JAMES W. MAST
Administrative Law Judge.

[PR Doc.77-4660 Filed 2-14-77; 8:45 am]

[Docket No. N-77-708]

WHITE SANDS
Hearing

In the matter of: White Sands, White Sands Investment Company and Diana D. Chesley, President, 76-337-IS, OILSR No. 0-2091-24-36; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. White Sands, White Sands Investment Company and Diana D. Chesley, President, authorized agents and officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 4, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b) (1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for White Sands located in Culver County, Maryland, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received December 2 and 8, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), it is hereby ordered, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing shall be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on March 8, 1977, at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., on or before February 8, 1977.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1720.160.

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: December 17, 1976.

By the Secretary.

JAMES W. MAST
Administrative Law Judge.

[PR Doc.77-4670 Filed 2-14-77; 8:45 am]

[Docket No. N-77-713]

WILLOW SPRINGS COUNTRY CLUB

Hearing

In the matter of: Willow Springs Country Club, Willow Springs Enterprises, Inc. and Stanley A. Harwood, President & Director, 76-347-IS, OILSR No. 6-3605-65-409; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Willow Springs Country Club, Willow Springs Enterprises, Inc. and Stanley A. Harwood, President & Director, authorized agents and officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 4, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b) (1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for White Sands located in Culver County, Maryland, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received December 2 and 8, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), it is hereby ordered, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing shall be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on March 8, 1977, at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., on or before February 8, 1977.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1720.440.

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: December 17, 1976.

By the Secretary.

JAMES W. MAST
Administrative Law Judge.
NOTICES

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
QUARTZ VALLEY RANCHERIA IN CALIFORNIA

Termination of Federal Supervision Over Property: Correction


This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. On January 18, 1971, "A Plan for the Distribution of Assets of the Quartz Valley Rancheria according to the provisions of Pub. L. 85-571, August 18, 1958," was approved by George W. Abbot, Assistant Secretary of the Interior, and accepted by the distributees in a referendum held at the Quartz Valley Rancheria on February 11, 1960. Notice of the termination of the Federal trust relationship over the Quartz Valley Rancheria in Siskiyou County, California, in accordance with the Plan was executed January 18, 1967, by Stewart L. Udall, Secretary of the Interior, and published in the Federal Register on January 19, 1961, on page 679 (32 FR 679). The names of Lorelei Jerry, Rebecca Louise Jerry and Kathleen Irene Jerry as decedent members of the immediate family of Anthony Jerry, a distributee, appeared on the list of persons affected by the termination action and such action has hampered the said Lorelei Jerry, Rebecca Louise Jerry, and Kathleen Irene Jerry in the exercise of their civil rights.

Notice is hereby given that names of Lorelei Jerry, now Aubrey, Rebecca Louise Jerry and Kathleen Irene Jerry are hereby stricken from "A Plan for the Distribution of the Assets of the Quartz Valley Rancheria according to the provisions of Pub. L. 85-571, August 18, 1958," nor shall said names appear in any of the official Federal documents relating to the termination of Federal supervision over the affairs and assets of the Quartz Valley Rancheria.

THEODORE K. KRENZKE,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 77-4713 Filed 2-4-77; 8:45 am]

Bureau of Land Management

Partial Termination of Proposed Withdrawal and Reservation of Lands: Correction


In FR Doc. 77-2063, filed January 21, 1977 and appearing on page 4220 of the issue for January 24, 1977, the following corrections should be made:

T. 15 S., R. 25 E., Sec. 31, should be read:
T. 15 S., R. 25 E., Sec. 31, All should read:
T. 16 S., R. 25 E., Sec. 11, Si, should be read:
T. 16 S., R. 25 E., Sec. 11, Si, SW 1/4 NW 1/4 should be read:
T. 16 S., R. 25 E., Sec. 11, SW 1/4 NW 1/4, SW 1/4 SW 1/4 should be read:
T. 16 S., R. 25 E., Sec. 11, SW 1/4 NW 1/4, SW 1/4 SW 1/4 should be read:

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
NOTICES

Fairbanks Division

Fairbanks, Hinkle-Creamer Dairy, between Farmer's Loop and College Rd.

Yukon-Koyukuk Division

Tanana vicinity, Tanana Mission, E. of Tanana.

CALIFORNIA

Los Angeles County

Pasadena, Nicholson, Grace, Building, 46 N. Los Robles Ave.

Whittier, Betsy, Jonathan, House, 10431 E. Camilla St.

Orange County

Santa Ana, Orange County Original Courthouse, 211 W. Santa Ana Blvd.

Riverside County

Riverside, Harada House, 3368 Lemon St.

San Mateo County

Redwood City, San Mateo County Courthouse, Broadway.

IOWA

Johnson County

Solon vicinity, Burch Farm, W. of Solon off IA 182.

KENTUCKY

Campbell County

Newport, Southgate-Farther-Maddux House, 24 E. 3rd St.

Fayette County

Lexington, Faison Hall, 447 S. Broadway.

Jefferson County

Anchorage, Anchorage-Berrytown Historic District, EX 146.

Louisville, West Main Street Historic District (Expanded), W. Main St.

Mercer County

Harrodsburg, Sutfield-Thompson House (Courtview), 362 N. Main.

Owen County

Cheaton, Highfield (Wills Roberts House), 303 N. Adams St.

LOUISIANA

Orleans Parish

New Orleans, Julia Street Row, 520-526 Julia St.

MARYLAND

Frederick County

Frederick vicinity, Nallin Farm Spring House and Barn, N. of Frederick.

NEW HAMPSHIRE

Grafton County

Orford, Orford Street Historic District, NH 10.

NEW JERSEY

Essex County

Newark, First National State Bank Building, 819 Broad St.

NEW MEXICO

Grant County

Silver City, Silver City Historic District, roughly bounded by Black (includes both sides), College, Hudson, and Spring Sts.

NORTH CAROLINA

Surry County

Asheville, Richmond Hill House, 40 Richmond Hill Rd.

Asheville, Zeelandia, 40 Vance Gep Rd.

Pendergast County

Belvidere, Belvidere, NC 27 (HABS).

Randolph County

Ramus, Deep River-Columbia Monum­
taturing District, Main St. at Deep River.

Vance County

Kittrell vicinity, Ashburn Hall, W of Kittrell on SR 1101.

Kittrell vicinity, Copchart, Thomas, House, W of Kittrell on SR 1103.

Wake County

Cary vicinity, Lane-Bennett House, E of Cary.

Wrenn County

Ridgeway vicinity, Chapel of the Good Shepherd, E of Ridgeway on SR 1107.

TENNESSEE

Claiborne County

Harrogate, Lincoln Memorial University.

Hamilton County

Birchwood vicinity, Rutherford Graded School and House, N of Birchwood on Bunker Rd.

Sullivan County

Kingsport vicinity, Looney, Moses, Fort House, 5406 Old Island Rd.

Wilson County

Lebanon, Memorial Hall, Cumberland University, Cumberland University campus.

TEXAS

Cameron County

Brownsville, Brownes-Wagner House, 245 E. St. Charles St.

Cass County

Queen City, Mathews-Powell House, Miller St.

Irion County

Sherwood, Irion County Courthouse, Public Sq.

Bureau of Reclamation

FIELD OFFICERS

Redelegation of Authority

The delegation of authority to the field officers previously published in the Federal Register (30 FR 700) is amended to read as set forth below.

The following material is a portion of the Reclamation Instructions and the numbering system is that of the manual.

PART 053—BUREAU OF RECLAMATION

CHAPTER 2—AUTHORITY OF FIELD OFFICERS

053.23 Redelegation—A. Authority. The following Upper Missouri Region officials, each with respect to the activities under his jurisdiction, are authorized to perform the functions and exercise the authority specified below in accord-

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
NOTICES

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977

COMMITTEE ON FUTURE ENERGY PROSPECTS NATIONAL PETROLEUM COUNCIL

Meeting

Notice is hereby given for the following meeting:

The National Petroleum Council's Committee on Future Energy Prospects will meet on Monday, March 7, 1977, at 10:00 a.m. in the Dally Madison Room of the Madison Hotel, 15th and M Streets, NW., Washington, D.C.

The agenda includes the following items for discussion:

1. Review and discuss progress on completion of individual discussion papers.
2. Discuss overall plans and timetable for completion of study.
3. Discuss any other matters pertinent to the overall assignment of the Committee.

The purpose of the National Petroleum Council is to provide to the Secretary of the Interior, upon request, advice, information, and recommendations upon any matters relating to the petroleum or the petro-chemical industry.

The meeting will be open to the public to the extent that space and facilities permit. Any member of the public may file a written statement with the Council either before or after the meeting. Interested persons who wish to speak at the meeting must apply to the Council and obtain approval in accordance with its established procedures.

Further information about the meeting may be obtained from B. Tafayo, Assistant Secretary, Energy and Minerals, Department of the Interior, Washington, D.C. (telephone: 303-234-8007).

DEPARTMENT OF JUSTICE

Office of the Attorney General

UNITED STATES V. EMPIRE COKE CO

Proposed Consent Decree in Action To Enjoin Discharges of Air and Water Pollutants

In accordance with Departmental policy, 28 CFR 60.7, 38 FR 19009, notice is hereby given that on February 3, 1977, a proposed consent decree in "United States v. Empire Coke Co." was lodged with the United States District Court for the Northern District of Alabama. The proposed decree would impose a $2000 civil penalty on the Empire Coke Co. for failing to comply with its National Pollutant Discharge Elimination System Permit, to wit it failed to submit its treatment plant construction plans to EPA by September 1, 1975, and failed to commence construction of the plant by January 1, 1976. The Company in the Consent Decree commits itself to attain the treatment level specified in its per-


E. Exercise of Authority. Exercise of this authority shall be in accordance with provisions of Part 053, Executive Manual, and Part 215, Reclamation In-

Office of the Secretary

BUMPING LAKE ENLARGEMENT, SUPPLEMENTAL STORAGE DIVISION, YAKIMA PROJECT, WASHINGTON

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement concerning the proposed enlargement of Bumping Lake Dam and Reservoir on the Bumping River in the Yakima Basin, south-central Washington. The principle action would be construction of a new dam, just downstream from the existing structure, to enlarge Bumping Lake from an active storage capacity of 13,760 to 458,000 acre-feet for multipurpose uses.

Written comments may be submitted to the Regional Director (address below) on or before April 1, 1977.

Copies are available for inspection at the following locations:
Division of Environmental Support, Technical Services Branch, EER Center, Denver Federal Center, Bureau of Reclamation, Department of the Interior, Denver, Colorado 80225, telephone 303-384-3907.

The agenda includes the following items for discussion:


ROBERT L. PESLEY,
Emergency Coordinator, Office of the Assistant Secretary—Energy and Minerals.


D. Delegation. Authorities delegated in paragraph 053.3.3 may not be redelegated.

E. Exercise of Authority. Exercise of this authority shall be in accordance with provisions of Part 053, Executive Manual, and Part 215, Reclamation In-

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977

ments, except that all proposed documents and other actions initiated by operating offices under this delegation of authority shall be reviewed by the Regional Director and the Field Solicitor prior to execution or issuance by the delegated official. A copy of each document and communication issued in accordance with this delegation of authority will be furnished to the Regional Director.


G. G. STUMM,
Commissioner of Reclamation.

Office of the Secretary

[INT DES 77-3]

BUMPING LAKE ENLARGEMENT, SUPPLEMENTAL STORAGE DIVISION, YAKIMA PROJECT, WASHINGTON

Availability of Draft Environmental Statement

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Division of Environmental Support, Technical Services Branch, EER Center, Denver Federal Center, Bureau of Reclamation, Department of the Interior, Denver, Colorado 80225, telephone 303-384-3907.
Division of Engineering Support, Technical Services Branch, EER Center, Denver Federal Center, Bureau of Reclamation, Department of the Interior, Denver, Colorado 80225, telephone 303-384-3907.
Yakima Project Office, Bureau of Reclamation, P.O. Box 80225, 1917 Marsh Road, Yakima, Washington 98901, telephone 509-575-5910.

Single copies of the draft statement may be obtained on request at the following locations:
Division of Environmental Support, Technical Services Branch, EER Center, Denver Federal Center, Bureau of Reclamation, Department of the Interior, Denver, Colorado 80225, telephone 303-384-3907.
Yakima Project Office, Bureau of Reclamation, P.O. Box 80225, 1917 Marsh Road, Yakima, Washington 98901, telephone 509-575-5910.

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Division of Engineering Support, Technical Services Branch, EER Center, Denver Federal Center, Bureau of Reclamation, Department of the Interior, Denver, Colorado 80225, telephone 303-384-3907.
Yakima Project Office, Bureau of Reclamation, P.O. Box 80225, 1917 Marsh Road, Yakima, Washington 98901, telephone 509-575-5910.
mit by June 30, 1977, the statutory deadline.

The Department of Justice will receive for fifteen (15) days from the date of this notice written comments relating to the proposed judgment. The usual thirty (30) day commitment period has been shortened in this case because of the need to have confirmed, as soon as possible, the treatment plant completion date provided in the Decree, thus assuring compliance with the treatment levels provided in the Federal Water Pollution Control Act.

The proposed consent decree may be examined at the Office of the United States Attorney, 200 Federal Courthouse, 1800 Fifth Avenue North, Birmingham, Alabama 35203, at the Region IV Office of the Environmental Protection Agency, Enforcement Division, 3545 Courtland Street, N.E., Atlanta, Georgia 30308, and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice, at the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

Peter R. Taft,
Assistant Attorney General,
Land and Natural Resources Division.

[PR Doc.77-4735 Filed 2-14-77; 8:45 am]

DEPARTMENT OF LABOR
Office of the Secretary
[TA-W-1310]

ACME NIPPLE MANUFACTURING CO.
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-1310 investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 1, 1976 in response to a written petition received on November 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc., at the Buffalo, New York plant of Acme Nipple Manufacturing Company.

The notice of investigation was published in the Federal Register on December 14, 1976 (41 FR 25452). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and officials of Acme Nipple Manufacturing Company.

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 firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That such separation occurred from, or resulted from, production of such firm or subdivision;

(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.

Without regard to whether any of the other criteria have been met, criterion 1 has not been met.

The Buffalo, New York plant of Acme Nipple Manufacturing Company produces pipe fittings and nipples.

Evidence developed in the Department’s investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Buffalo, New York plant of Acme Nipple Manufacturing Company have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of February 1977.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[PR Doc.77-4746 Filed 2-14-77; 8:45 am]

[TA-W-1,617]

ALLAN SHOE MANUFACTURING CO., INC.
Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 24, 1977 the Department of Labor received a petition dated January 21, 1977 which was filed under Section 221(a) of the Trade Act of 1974 (the "Act") on behalf of the workers and former workers of Allan Shoe Manufacturing Co., Inc., Norwich, Connecticut, a Division of Charles Pinchby, Inc., Scarsdale, New York (TA-W-1,617).

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 men's work boots and casual boots produced by Allan Shoe Manufacturing Co., 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 occur and any other effect on the firm involved. A group meeting the ineligibility 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 90.15, 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 February 25, 1977.

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 February 25, 1977.

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 21st day of January 1977.

Martin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[PR Doc.77-4746 Filed 2-14-77; 8:45 am]

[TA-W-1458]

ALLIED CHEMICAL CORP., SEMET SOLVAY DIVISION
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-1458 investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 15, 1976 in response to a worker petition received on December 15, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc., at the Semet-Solvay Division, Detroit, Michigan of the Allied Chemical Corporation, Morristown, New Jersey.

The notice of investigation was published in the Federal Register on January 7, 1977 (42 FR 1531). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and officials of Allied Chemical Manufacturing Company.

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 firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That such separation occurred from or resulted from production of such firm or subdivision;

(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.

Without regard to whether any of the other criteria have been met, criterion 1 has not been met.

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has determined that a significant number or proportion of the workers in the firm of Allied Chemical Corporation, Semet-Solvay Division, has not become totally or partially separated as required in section 222 of the Act.

Signed at Washington, D.C. this 13th day of January 1977.

Martin M. Fooks,
Director, Office of Trade Adjustment Assistance.
hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and the Allied Chemical Corporation.

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 worker's 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.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Semet Solvay Division of the Allied Chemical Corporation, Detroit, Michigan, produces cokes. Corporate headquarters for the Allied Chemical Corporation are in Morristown, New Jersey.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Semet Solvay Division, Detroit, Michigan of the Allied Chemical Corporation, Morristown, New Jersey have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES P. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4747 Filed 2-14-77; 8:45 am]

ANNA AND WILLIAM BERMAN

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 25, 1977 filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Anna and William Berman, South River, New Jersey (TA-W-1,611). 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 90.9.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with automobile wire harness produced by Coleman 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 become total or partial separations.

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 February 25, 1977.

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 February 25, 1977.

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, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 31st day of January 1977.

MARTIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4748 Filed 2-14-77; 8:45 am]

COLEMAN PRODUCTS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 24, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Coleman Products Company, Coleman, Wisconsin (TA-W-1,611). 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 automobile wire harness produced by Coleman 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 become total or partial separations.

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 February 25, 1977.

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 February 25, 1977.

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 31st day of January 1977.

MARTIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4749 Filed 2-14-77; 8:45 am]

[TAW-1,611]

COLEMAN PRODUCTS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 24, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Iron River plant, Iron River, Michigan of Coleman Products Company, Coleman, Wisconsin (TA-W-1,611). 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 automobile wire harness produced by Coleman 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 become total or partial separations.

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 February 25, 1977.

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 February 25, 1977.

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 31st day of January 1977.

MARTIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4750 Filed 2-14-77; 8:45 am]
NOTICES

CONTINENTAL PIPE PRODUCTS MANUFACTURING CO.

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 has conducted an investigation of Continental Pipe Products Manufacturing Company as required in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Chicago, Illinois plant of Continental Pipe Products Manufacturing Company.

The Notice of Investigation was published in the Federal Register on January 4, 1977 (42 FR 878). No public hearing was requested and none was held.

The information upon which the determination was made is contained in the file of the investigation. The investigation was initiated pursuant to 29 CFR 90.13, the petition received on December 1, 1976 in response to a worker petition.

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 31st day of January 1977.

MARTYN M. FOOTE,
Director, Office of Trade Adjustment Assistance.

[TA-W-1354]

CONVERSE RUBBER CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 25, 1977 the Department of Labor received a petition dated January 26, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Rubber, Cork, Linoleum & Plastic Workers of America on behalf of the workers and former workers of Tyer Rubber Division, Andover, Massachusetts of Converse Rubber Co., Wilmington, Mass., a Division of E. Deering & Co. of New York, New York (TA-W-1613). 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 Part 90.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with rubber & canvas footwear & leather athletic footwear produced by Converse Rubber 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.

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 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4751 Filed 2-14-77; 8:45 am]

[TA-W-1613]
NOTICES

Signed at Washington, D.C. this 31st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4753 Filed 2-14-77; 8:45 am]

[TA-W-1,614]

CONVERSE RUBBER CO.
Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 25, 1977 the Department of Labor received a petition dated January 17, 1977 which was filed under section 221(a) of the Act of 1974 ("the Act") on behalf of the workers and former workers of Granite State Division, Berlin, New Hampshire of Converse Rubber Co., Wilmington, Mass., a Division of Eltra Corporation, New York, New York (TA-W-1,614). 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 canvas and rubber footwear produced by Converse Rubber 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 shown below, not later than February 25, 1977.

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 February 25, 1977.

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 31ST DAY OF JANUARY 1977.

CONVERSE RUBBER COMPANY,


DAVE GOLDBERG MANUFACTURING CO.
Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 29, 1976 the Department of Labor received a petition dated December 22, 1976 which was filed under section 221(a) of the Act of 1974 ("the Act") on behalf of the workers and former workers of Dave Goldberg Manufacturing 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 February 25, 1977.

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 February 25, 1977.

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 31ST DAY OF JANUARY 1976.

DAVE GOLDBERG MANUFACTURING CO.,

NOTICES

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Salem, Ohio plant of the Hunt Valve Company, Incorporated has been injured by the continued importation of substantially similar products by foreign producers, and that the petition is meritorious.

Signed at Washington, D.C., this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 77-4757 Filed 2-14-77; 6:45 am]

[TA-W-1329]

HYDRIL CO.

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-1329: investigation regarding certification of eligibility to apply for worker adjustment assistance, as prescribed in section 222 of the Act.

The investigation was initiated on December 14, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass valves, couplings, flanges, etc. at the Hydril Company.

The notice of investigation was published in the Federal Register on January 7, 1977 (42 FR 559). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America, the Hunt Valve Company, Incorporated, and the Hydril Company.

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 significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated; and
(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.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The information obtained in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Salem, Ohio plant of the Hunt Valve Company, Incorporated has been injured by the continued importation of substantially similar products by foreign producers, and that the petition is meritorious.

Signed at Washington, D.C., this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 77-4757 Filed 2-14-77; 6:45 am]

[TA-W-1329]

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
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.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Houston, Texas plant of the Hydril Company produces tubing and casing made from flat cold-rolled sheet steel.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Houston, Texas plant of the Hydrl Company have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.
[FR Doc. 77-4758 Filed 2-14-77; 8:45 am]

[T-A-W-1357]
INTERNATIONAL BASIC ECONOMIC CORP.

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 investigation W-1357: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing stainless steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc., at the Morgan Avenue plant, Akron, Ohio plant of the International Basic Economic Corporation, Bellows International Division.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 85). No public hearing was held; and

The information upon which the determination was made was obtained from the United Steelworkers of America and the International Basic Economic Corporation, Bellows International Division.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance under the group eligibility requirements of section 222 of the Act of 1974 must be met:

(1) That a significant number or proportion of the workers' firm or an appropriate subdivision of the firm have become totally or partially separated;
(2) That such firm or subdivision have decreased absolutely;
(3) 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.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Morgan Avenue plant of the International Basic Economic Corporation, Bellows International Division produces valves known as Simons-Collins valves. These are large bronze process control valves used primarily in the rubber tire press and record press industries.

Evidence developed in the Department's investigation reveals that no workers have been laid off or experienced significant reductions in their hours of work from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Morgan Avenue plant, Akron, Ohio plant of the International Basic Economic Corporation, Bellows International Division have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.
[FR Doc. 77-4759 Filed 2-14-77; 8:45 am]

[T-A-W-1,609]
JO-GAL SHOE, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 14, 1977 the Department of Labor received a petition dated January 12, 1977 which was filed under section 221(a) of the Trade Act of 1974, addressed to the Director, Office of Trade Adjustment Assistance, and the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 1977.

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, 209 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of January 1977.

MARTIN M. FOOGES,
Director, Office of Trade Adjustment Assistance.
[FR Doc. 77-4770 Filed 2-14-77; 8:45 am]

[T-A-W-1,610]
JONELL SHOE, INCORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 24, 1977 the Department of Labor received a petition dated January 17, 1977 which was filed under section 221(a) of the Act of 1974 ("the Act") by the United Shoe Workers of America on behalf of the former workers of Jonell Shoe, Incorporated, Lawrence, Massachusetts, a subsidiary of Marie Shoe, Inc., Canton, Mass. (TA-W-1,610). According to the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, Jonell Shoe, Incorporated, 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 imitation leathershoes for misses, children and infants produced by Jo-Gal Shoe, Incorporated, 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 actual or threatened 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 Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 1977.

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 February 25, 1977.

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, 209 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of January 1977.

MARTIN M. FOOGES,
Director, Office of Trade Adjustment Assistance.
[FR Doc. 77-4770 Filed 2-14-77; 8:45 am]
directly competitive with women's casual cloth & canvas vulcanized footwear produced by Jonell Shoe, Incorporated or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision to the actual or threatened total or partial separation of a significant number of workers 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 February 25, 1977.

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 February 25, 1977.

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 27th day of January 1977.

Marilyn M. Fooks, Director, Office of Trade Adjustment Assistance.

[TA-W-1600]

STONEART, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Act of 1974 the Department of Labor herein presents the results of 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 15, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers of StoneArt, Inc., Racine, Wisconsin.

The Notice of Investigation was published in the Federal Register on October 29, 1976 (41 FR 47630). No public hearing was requested and none was held.

The information upon which the determination is based was obtained principally from officials of StoneArt, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department of Labor.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements in 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 the first three criteria have been met, the fourth criterion has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of workers at StoneArt, Inc. decreased 67.6 percent in the first quarter of 1976 compared to the same period in 1975. All workers were separated by May 1976 when the plant closed.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of flower pots produced at StoneArt, Inc. decreased 38.1 percent in quantity and declined 17.3 percent in value in the first quarter of 1976 compared to the same period in 1975. Production was terminated in May 1976 when StoneArt, Inc. closed.

INCREASED IMPORTS

Imports of ceramic art and ornamental articles of earthenware or stoneware increased absolutely and relative to domestic production in each year from 1971 through 1974. The ratio of imports to domestic production declined from 84.8 percent in 1974 to 84.2 percent in 1975. Imports increased in value from $81.5 million in the first three quarters of 1975 to $106.2 million in the same period in 1976.

CONTRIBUTED IMPORTANTLY

The StoneArt production process was deficient in one important respect that resulted in a defective product. Because of this, customers returned flower pots ordered from StoneArt and discontinued their purchases of the StoneArt product. These customers did not import.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with flower pots produced at StoneArt, Inc. did not contribute importantly to the total or par-
OFFICE OF MANAGEMENT AND BUDGET

CLEANCE 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 February 10, 1977 (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 (202-395-4229), or from the reviewer listed.

NEW FORMS

Veterans Administration
Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, 36 8736, on occasion, lenders, Caywood, D. P., 395-3444.

Nonsupervised Lenders' Nomination and Recommendation of Credit Underwriter, 39 8736A, on occasion, lender's, Caywood, D. P., 395-3444.

National Science Foundation
Application for NSF Public Service Science Residencies and Internships, annually, scientists and engineers, science and engineering students, Tracey Cole, 395-5870.

Department of Agriculture

Department of Commerce

(Part of 1980 Decennial Census of Population and Housing), Form/crosses Address Register—1977 Census of Oakland, California, DH 103, A&B, single time, all households in the city of Oakland, California, Georgia Hall, 395-6140.

Point of Purchase Questionnaire, Consume Item Checklist, "Resident" Letter, CPP L2A2B, CPP, annually, households in 50 selected SMSAs and smaller cities, Strasser, A., 395-5907.

Department of Health, Education and Welfare


Department of the Interior
Bureau of Sport Fisheries and Wildlife, Transfer of Ownership: Threatened Species, on occasion, seller or donor of captive threatened species, Tracey Cole, 395-5870.

Revisions

Veterans Administration
Veterans Supplemental Application for Assistance in Acquiring Special Adapted Housing, 26 4555C, on occasion, veterans, Caywood, D. P., 395-3443.


Extensions

Department of Agriculture
Food and Nutrition Service: Child Care Food Program Regulations, 7 CFR 226, on occasion, State agencies, non-school public or private, Tracey Cole, 395-5870.


Department of Commerce

Department of Health, Education, and Welfare

Phillip D. Larsen, Budget and Management Officer.

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 February 9, 1977 (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, (202-395-4229), or from the reviewer listed.

New Forms

Energy Research and Development Administration
ERDA Uniform Contractor Reporting Guide (UCRG), other (see DF-39), Contractors to the ERDA, Caywood, D. P., 395-3443.

Department of Commerce

Department of Defense

Department of Labor
Employment and Training Administration: Report of Activities Related to Expanded SRP Program, ERPA 1, other (see SF-31), State employment security agency, Lowry, R. L., 395-5772.

Revisions

Veterans Administration
Request for Determination of Eligibility and Available Loan, guaranty entitlement, 26-1889, on occasion, veterans, Caywood, D. P., 395-3443.

Department of Agriculture


Department of Commerce

Department of Defense
Departmental and Other: Application for review of discharge or separation from the Armed Forces of the United States, DD-293, on occasion, applicants, Lowry, R. L., 395-5772.
NOTICES

NEW FORMS

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Assessment of Industry Energy RD&D, single-time, firms serving interchanged programs, Charles A. Elliot, 305-3867.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service:

On-Farm Grain Storage Survey (Kansas), single-time, grain farmers, Will Sherman, 305-4730.

DEPARTMENT OF COMMUNITY

National Bureau of Standards:

Survey of Swine Flu Immunization, CPS-1, invites all persons 1 year old and over, Richard Eisinger, 395-6140.

DEPARTMENT OF COMMERCE

Application for Section 115 Rehabilitation Grant, HUD-6290, on occasion, for income individuals and households, housing, veterans and labor division, 305-3332.

DEPARTMENT OF LABOR

Request for Verification of Employment—Rehabilitation Loan Program, HUD-6233, on occasion, employer of the rehabilitation loans, housing, veterans and labor division, 305-3332.

DEPARTMENT OF TRANSPORTATION

Housing Management:

Claim for Payment of HUD Security Deposit Guarantee and Compensation for Vacancy Loss, HUD-6287, on occasion, Indians, owners of units W/HAP contracts under sec. 8, housing, veterans and labor division, 305-3332.

DEPARTMENT OF URBAN DEVELOPMENT

Request for Verification of Deposit—Rehabilitation Loan and Grant Programs, HUD-6294, on occasion, banks and other financial institutions used as depositors of funds, housing, veterans and labor division, 305-3332.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Statement of Witness, SF-39, other (see SF 33), witness to accident, David P. Caywood, 395-3443.

REVISIONS

DEPARTMENT OF COMMUNITY

Community Planning and Development:

Application for Rehabilitation Loan—Investor owned Residential Property or Mixed-use Loan, HUD-6239, on occasion, investor owning residential or mixed-use property, housing, veterans and labor division, 305-3332.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Food and Nutrition Service:


DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development:

Intake and Service Summary Program Feedback, other (see SF-88), staff of funded runaway youth projects, Tracey Cole, 305-3870.

PHILLIP D. LAIFases,

Budget and Management Officer

[FR Doc.77-4924 Filed 2-14-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of forms intended for use in collecting information from the public received by the Office of Management and Budget on February 7, 1977 (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, if applicable; the frequency with which the information is requested 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.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through RULEPHONE.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, DC 20503, (202-395-4529).
OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATION

TRADE POLICY STAFF COMMITTEE

Footwear Import Relief: Solicitation of Public Views

Pursuant to section 201 of the Trade Act of 1974, the United States International Trade Commission has reported to the President on the case of nonrubber footwear (Investigation No. TA-201-18). The Commission submitted a report containing an affirmative determination that footwear, provided for in items 700.05 through 700.05 inclusive (except) 700.27, 700.41, and 700.60, and disposable footwear designated for one-time use provided for in item 700.85) of the Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202), is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.

Four Commissioners found and recommended that the imposition of a system of tariff-rate quotas on all the imported articles that were covered by the Commission's injury finding (except athletic footwear as defined in TSUS Schedule 7, Part 1A, statistical heading 9245, in whatever item provided therefor) would be necessary to remedy the serious injury. One Commissioner found and recommended that the imposition of higher duties was necessary to remedy the serious injury. One Commissioner found and is recommending that adjustment assistance under Chapters 2, 3, and 4 of the Trade Act of 1974 could remedy such injury.

Copies of the Report of the United States International Trade Commission on this matter are available to the public, as long as the supply lasts, from the Office of the Secretary, United States International Trade Commission, E Street between 7th and 8th Streets, N.W., Washington, D.C. 20436.

Within 60 days of receiving a report from the Commission containing an affirmative determination, the President must determine (a) what method and amount of import relief he will provide, or (b) that the provision of relief is not in the national economic interest, and (c) whether he will direct expedited consideration of adjustment assistance petitions.

In determining whether to provide import relief, and what method and amount of import relief he will provide, the President must take into account, in addition to other considerations he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the manner in which it was made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from the President's obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States market is a focal point for exports of such article by reason of restraints on imports of such article into, or on imports of such article into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not provided.

The Special Representative for Trade Negotiations chairs the interagency Trade Policy Staff Committee that makes recommendations as to what action, if any, the President should take on reports submitted by the International Trade Commission under section 201 of the Trade Act. In order to assist the Trade Policy Staff Committee (TPSC), a subcommittee of the Trade Policy Committee, in developing these recommendations as to what action, if any, should be taken under sections 202 and 203 of the Trade Act, the TPSC welcomes briefs from interested parties on the USITC report and possible actions of the President described herein.

Briefs should be submitted in twenty copies to the Chairmen of the Trade Policy Committee, in Room 728, Office of the Special Representative for Trade Negotiations, 1800 G Street N.W., Washington, D.C. 20506.

To be considered by Trade Policy Staff Committee, submissions should be received in the Office of the Special Representative for Trade Negotiations no later than March 2, 1977.

WILLIAM B. KELLY, JR.,
Chairman, Trade Policy Staff Committee.
NOTICES

RENEGOTIATION BOARD

STANDARD FORMS OF CONTRACTOR'S REPORT (RB FORM 1) AND APPLICATIONS FOR COMMERCIAL EXEMPTION

Extension of Time for Filing

Effective this date, notice is hereby given that all contractors and subcontractors with fiscal years ending subsequent to September 30, 1976 and prior to February 1, 1977, have granted an extension of time of three months for filing Standard Forms of Contractor's Report (RB Form 1) and Applications for Commercial Exemption.


Rex M. Mattingly, Chairman.

[FR Doc. 77-4735 Filed 2-14-77; 6:15 am]

SMALL BUSINESS ADMINISTRATION

BALTIMORE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Baltimore District Advisory Council will hold a public meeting at 9:30 a.m., until 1:30 p.m., Friday, May 13, 1977 and at 9:30 a.m. until 12:00 noon, Saturday, May 14, 1977, at the Wisp Hotel in Oakwood Road, Towson, Maryland 21204. As such matters may be presented by members, staff of the Small Business Administration, or others present. For further information write or call Jerry S. King, U.S. Small Business Administration, F.O. Box 2839, Casper, Wyoming 82602, 307-265-5559.


Henry V. Z. Hyde, Jr., Deputy Advocate for Advisory Councils.

[FR Doc. 77-4735 Filed 2-14-77; 6:15 am]

CASPER DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Casper District Advisory Council will hold a public meeting at 9:30 a.m. Friday, May 6, 1977, in the Champagne Room of the Ramada Inn, Casper, Wyoming, 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 Jerry S. King, U.S. Small Business Administration, F.O. Box 2839, Casper, Wyoming 82602, 307-265-5559.


Henry V. Z. Hyde, Jr., Deputy Advocate for Advisory Councils.

[FR Doc. 77-4735 Filed 2-14-77; 6:15 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

LIST OF COUNTRIES REQUIRING COOPERATION WITH AN INTERNATIONAL BOYCOTT

In order to comply with the mandate of section 999(a) (3) of the Internal Revenue Code of 1954, the Department of the Treasury has compiled a current list of countries which may require participation in or cooperation with an international boycott. This list is the same as the list published in the Notice of March 3, 1976, Federal Register. In the future a current list will be published at the beginning of each calendar quarter.

Pursuant to the requirement of section 999(a) (3) of the Internal Revenue Code of 1954, the Department of the Treasury has compiled a list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b) (2) of the Internal Revenue Code of 1954).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b) (3) of the Internal Revenue Code of 1954):

Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, People's Democratic Republic, Republic of.


W. Michael Blumenthal, Secretary of the Treasury.

[FR Doc. 77-4718 Filed 2-14-77; 10:30 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 326]

ASSIGNMENT OF HEARINGS

FEbruary 10, 1977

Cases assigned for hearing, postpone, 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 of hearings in which they are interested.

MC 2017 Sub-No. 64, Chesapeake Motor Lines, Inc, now assigned March 9, 1977, at Seattle Wash., will be held in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 142154, Donald J. Byrd, d/b/a Byrd Trucking, now assigned March 8, 1977, at Seattle, Wash., will be heard in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 61592 Sub 349, Jenkins Truck Line, Inc., now assigned March 14, 1977, at Seattle, Wash., will be held in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 74321 Sub 106, Tony's Trucking, Inc., now assigned March 14, 1977, at Seattle, Wash., will be held in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 100666 Sub 329, Melton Truck Lines, Inc., and MC 140597 Sub 343, Tri-State Motor Transit Co., now assigned March 14, 1977, at Seattle, Wash., will be held in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 61592 SubNo. 1, C & H Transportation Co., Inc., now assigned March 14, 1977, at Seattle, Wash., will be held in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 64157 Sub No. 1, Soverson Transportation Co., Inc., now assigned March 17, 1977, at Seattle, Wash., will be held in Room 2866, Federal Bldg., 912 3rd Avenue.
MC 46066 Sub 20, Anderson Truck Line, Inc., now assigned March 1, 1977, at Charlotte, N.C., will be held in the Holiday Inn, 212 Woodlawn Road.
MC 142215, Duke Transportation, Inc., now assigned March 16, 1977, at Baton Rouge, La., will be held on the 5th floor Conference Room, State Library, 760 Riverside Mall.
MC 36720 Sub 5, Merchants Freight Line, Inc., now assigned March 15, 1977 at Nashville, Tenn., will be held in Room A-861 Federal Courthouse Annex, 601 Broadway, on March 21, 1977 at Nashville, Tenn., will be held in Room A-440, Federal Courthouse Annex, 601 Broadway, and on March 21, 1977 at Nashville, Tenn., will be held in Room A-861, Federal Courthouse Annex, 601 Broadway.
MC 11453 Sub 341, Bankers-Dispatch Corp., now assigned March 20, 1977 at Kansas City, Mo., will be held in Room 828 U.S. Courthouse, 111 West Main Street.
MC-8-979, Mrs. Charles Hodgens, Individ­ual, dba Tour of the Month Club and Magnetic World Co., Inc., dba Magnetic World Co., Inc., now assigned March 20, 1977 at Kansas City, Mo., will be held in Room 828 U.S. Courthouse, 111 West Main Street.


W. Michael Blumenthal, Secretary of the Treasury.

[FR Doc. 77-4718 Filed 2-14-77; 6:15 am]

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
NOTICES

9247

MC 116763 (Sub-355), Carl Subler Trucking, Inc., application dismissed.
No. 38438, Petition for Declaratory Order and Reorganization (Consolidated Rail Corporation, New Jersey and New York) and No. 36874, Benjamin Rail Corporation, now assigned March 29, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.
No. 106492 Sub 3, Parkhill Truck Co., now assigned March 29, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.
No. 30844 Sub 571, Krobin Refrigerated Xpress, Inc., now assigned April 4, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.
No. 109992 Sub 38, Grain Belt Transportation Co., and MC 130670 Sub 6, Heavy Rigs, Inc., now assigned March 29, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.
No. 123044 Sub 28, Diamond Transportation Inc., now assigned April 5, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.
No. 132953, Red Ball Motor Freight, Inc.—Purchase (Portion)—Thunderbird Freight Lines, Inc., now assigned April 12, 1977, at Los Angeles, Calif., will be held at the Biltmore Hotel, 515 S. Olive.
No. 132957, Stanley L. Watkins & Stan Watkin Transportation, Inc.—Investigation of Control—Tiger Transportation, Inc. and Eugene Tripp, now assigned March 29, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.
No. 142189 Sub 1, C. M. Burns, an individual dba Western Transportation, now assigned March 29, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.
No. 123045 Sub 344, Diamond Transportation Company, now assigned March 29, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.
No. 117068 Sub 66, Midwest Specialized Transportation, Inc., now assigned March 29, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.
AB 13 Sub 23, Southern Pacific Transportation Co., Abandonment between Hazen and Fallon in Churchill County, Nevada, now assigned April 4, 1977, at Fallon, Nevada, will be held in the Law Enforcement Facility, 3rd Floor, 73 North Main Street.
AB 19 Sub 28, Buffalo Rochester & Pittsburgh R.R., now assigned March 29, 1977, at Buffalo, N.Y., will be held in the Wyoming County Courthouse, Court Room, Main & Court Streets.

Baltimore and Ohio Railroad Co. ET AL

Exemption Under Provision of Mandatory Car Service Rules

It appearing, That the railroads named below own numerous 50-ton, plain box-cars; that under present conditions there are substantial usurpations of these cars on the lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used on the lines; that return of these cars to the owners would result in unnecessary loss of utilization of such cars;

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ton, plain box-cars described in the Official Railway Equipment Register, L.C.C.—R.R. No. 402, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1, 2 (a), and 2 (b).

The Baltimore and Ohio Railroad Company

Reporting Marks: BO
Cadiz Railroad Company

Reporting Marks: PRV

The Chesapeake and Ohio Railway Company

Reporting Marks: CO—PM

The Claremont and Pittsford Railroad Company

Reporting Marks: CLP

Egin, Jolies and Eastern Railroad Company

Reporting Marks: TPW

Green Mountain Railroad Corporation

Reporting Marks: GMRQ

Great Falls and Western Railway Company

Reporting Marks: GHN

Louisville and Wadley Railroad Company

Reporting Marks: LNW

Louisville, New Albany & Corydon Railroad Company

Reporting Marks: LANC

Missouri-Kansas-Texas Railroad Company

Reporting Marks: BKY—MIT

New England, Indiana & Tittsburgh Railroad Company

Reporting Marks: NKJ

Norfolk and Western Railway Company

Reporting Marks: NW—ACY—MK—PEWY—WAB

Ogdensburg Bridge and Port Authority

Reporting Marks: PEW

Pearl River Valley Railroad Company

Reporting Marks: PHW

The Pittsburgh and Lake Erie Railroad Company

Reporting Marks: PHW

Vermont Central Railroad Company

Reporting Marks: VTR

Western Maryland Railway Company

Reporting Marks: WY

Western Southern Railroad Company

Reporting Marks: YW

Effective January 31, 1977, and continuing in effect until further order of this Commission.


INTERSTATE COMMERCE COMMISSION,

J. E. Burns, Agent.

[FR Doc.77-7765 Filed 2-14-77; 8:45 am]

[No. 36279]

DENENHOLZ & JANER, INC.

Petition for Declaratory Order—Statute of Limitations

Order. A seshion of the Interstate Commerce Commission, Division 2, acting as an Appellate Division, held at its office in Washington, D.C., on the 4th day of February 1977.

Upon consideration of the record in the above-entitled proceeding including the petition by Denenholz & Janer filed on May 20, 1976, for reconsideration of the order of the Commission served May 3, 1976, denying petitioner's request for a declaratory order; and

It appearing, that petitioner represents several shippers who have timely filed overcharge claims with carriers who are presently in bankruptcy and that petitioner contends that notice to said bankrupt carrier also served as notice to connecting, through, and interline carriers.

It further appearing, that upon reconsideration it has been shown that an issue of importance, arising from a dispute as to the proper interpretation of the Interstate Commerce Act has been raised, and that the outcome will affect numerous shippers and carriers:...
It further appearing, that petitioner requests an interpretation that (1) The statute of limitations on overcharge claims are tolled upon the filing of an overcharge claim with any carrier participating in a through joint rate; (2) a carrier's failure, because of bankruptcy or other financial inability to pay an overcharge claim which it acknowledges to be correct, establishes a privilege and a right to transfer said overcharge claim for handling by any financially capable connecting carrier in the route movement; and (3) a connecting carrier's failure to accept and honor such binding obligation shall constitute a disallowance of the claim as said term is used in the statute of limitations on overcharge claims;

And it further appearing, that it has become necessary to interpret sections 16(3)(c) and 204a(2) of the Act (49 U.S.C. 16 and 304) to determine whether notification of an overcharge claim to the primary carrier tolls the statute of limitations as to connecting carriers, through carriers, and interlining carriers;

Wherefore, and for good cause:

It is ordered, That petition reconsideration be, and it is hereby granted.

It is further ordered, That pursuant to section 554(e) of the Administrative Procedure Act, 5 U.S.C. 554(e), and in the exercise of the Commission's sound discretion thereunder, this petition for a declaratory order be, and it is hereby, granted.

It is further ordered, That this proceeding be, and it is hereby, instituted to clarify the matters herein as to the application of the statute of limitations with respect to connecting carriers, through carriers, or interlining carriers who may be liable to shippers for overcharges;

It is further ordered, That this proceeding be, and is hereby, made a party to this proceeding and that all other persons desiring to participate shall make such fact known by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C., 20423, on or before March 7, 1977, and that as soon as practicable, thereafter, the Commission will serve a list of the names and addresses of all persons on whom service of an opening and reply statement shall be made;

And it is further ordered, That a copy of this order be served upon petitioner and all parties to No. 36435 including those persons who requested to be advised of Commission actions therein, that a copy be deposited in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and that notice of this order be given to the public by delivery of a copy thereof to the Director, Office of the Federal Register for publication therein.

By the Commission, Division 2, acting as an Appellate Division, Commissioner Hardin, O'Neal and Christian.

ROBERT L. OSWALD, Secretary.

[PR Doc. 77-4767 Filed 2-14-77; 8:45 am]
COMMODITY FUTURES TRADING COMMISSION

COMMODITY POOL OPERATORS

Proposed Comprehensive Scheme For Regulation
PROPOSED RULES

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 4]

COMMODITY POOL OPERATORS

Proposed Comprehensive Scheme for Regulation

The Commodity Futures Trading Commission (“Commission”) is proposing the adoption of new regulations under the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. 1-22 (Supp. V, 1975) (Act), to establish a comprehensive scheme for the regulation of commodity pool operators. The proposed regulations would: (1) Define the term “individual principal” of a commodity pool operator; (2) require that a pool operator furnish a written disclosure statement to prospective pool participants or before the date it solicits, accepts, or receives funds from such prospective participants; (3) require that a pool operator furnish immediate access to such records; (4) establish record-keeping and reporting requirements for pool operators, including a requirement that a pool operator maintain monthly financial statements for each pool and a record of the trading activities of the pool operator and its individual principals for their own account and a provision that pool participants have immediate access to such records; (5) establish record-keeping requirements for pool operators, including a requirement that a pool operator maintain monthly statements of account to each pool participant setting forth the number of commodity interests traded by the pool, the pool operator and its individual principals; and (6) prohibit pool operators from advertising the results of simulated or hypothetical commodity accounts or transactions.

GENERAL EXPLANATION

Commodity pool operators represent a new category of Commission registrant, subject to comprehensive regulation under the Act only since July 18, 1975, the effective date of section 265 of the Commodity Futures Trading Commission Act of 1974 (“CFTC Act”), Pub. L. 93-463, 88 Stat. 1389, 1975. The CFTC Act extensively amended the Act, adding to it, among other things, a definition of the term “commodity pool operator” and a requirement that commodity pool operators register with the Commission. As amended by the CFTC Act, the Act also requires that a pool operator “maintain books and records and file such reports in such form and manner as may be prescribed by the Commission” for the Commission’s current proposals would implement these provisions of the Act and many of the recent recommendations of the Commodity Options and Futures Trading Professional Committee on Commodity Futures Trading Professionals (“Advisory Committee”).

One principle which pervades all the proposed pool operator regulations and which, therefore, should be discussed at the outset is the emphasis of the regulations on trading by a commodity pool in commodity options and leverage contracts, as well as in commodity futures contracts. Section 2(1) of the Act, 7 U.S.C. 6b(1), defines a commodity pool operator as a person who, among other things, “solicits, accepts, or receives from others, funds, securities, or property by offering to engage in any commodity for future delivery on or subject to the rules of any contract market.” For purposes of the proposed record-keeping and reporting requirements for pool operators, the Commission does not believe that meaningful distinctions can be made between the types of commodity interests traded by the pool; the rationale for regulation is the same as for the pool operating in any commodity futures market. Therefore, the Commission’s rulemaking authority with respect to transactions involving commodity options under sections 2(1) and 4c of the Act and with respect to leverage contracts under section 4a of the Act and its rulemaking authority under sections 8a(5) and 8a(8) of the Act, the Commission has proposed that trading by a commodity pool in these commodity interests be regulated in the same manner as trading in commodity futures contracts. This is done by defining the term “commodity interests” to include commodity futures contracts, commodity options and leverage contracts.

SUMMARY OF PROPOSED REGULATIONS

Commodity Pool Operator Disclosure Statement: The legislative history of section 4n of the Act that relates to commodity pool operators indicates that the section was designed to protect unsophisticated traders from certain undesirable managerial and trading practices of pool operators. A full disclosure of the material facts of the pool’s organization and operations, as well as of the pool operator’s background and past practices, would expose and thus help to circumvent the undesirable business practices of some pool operators. Proposed § 4.3 requires that specified items be disclosed in a written disclosure statement before investing funds in the pool. If the pool operator solicits funds from others, it must provide a copy of the written statement to the Commission of the written statement before investing funds in the pool, or, if the pool operator does not solicit funds, before such pool operator accepts or receives the funds of such participant. The requirement of furnishing a written disclosure statement is designed to afford a prospective participant the opportunity to become informed of material facts concerning the pool operator, the pool and trading in commodity interests, before investing funds in the pool. The disclosure statement should ensure that the pool operator has the opportunity to read and consider the disclosure statement before investing funds in the pool, proposed § 4.3(a) requires that the pool operator return the securities or other contributions contributed by such prospective participant if he demands within two business days of his receipt of the statement. While the proposed regulation does not require the pool operator to file a copy of the written statement before distributing it to prospective participants, it does require the pool operator to file a copy of the written statement with the Commission of the written statement within 7 days of the date it commences distribution of the statement to prospective pool participants.

Proposed § 4.3(b) sets forth the specific information which must be included in the disclosure statement. Some of the more significant disclosures are:

1. The background and experience of the pool operator and its individual principals in commodities and other business matters;
2. Certain information about the pool, including trading objectives, trading strategies, amount of assets that will be committed as margin for the trading or commodity interests, payment of dividends and


FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
any restrictions on the redemption or transfer of interests in the pool;

(3) A general description of the nature of trading in commodity interests;

(4) Past performance of other pools operated by the pool operator and any accounts managed by the pool operator;

(5) An explanation of all fees and expenses which may be incurred by the pool;

(6) The background and experience of each commodity trading advisor with which the pool intends to maintain an advisory services contract;

(7) An explanation of any business arrangement between the pool operator, any individual principal thereof or the trading advisor with which the pool maintains an advisory services contract and any futures commission merchant which may carry the pool’s account;

(8) The extent to which the pool operator or any individual principal thereof trades or intends to trade for its own account;

(9) The nature of any actual or potential conflict of interest between the pool and the pool operator, any individual principal thereof or any trading advisor with which the pool maintains an advisory services contract;

(10) The extent, if any, of participants’ liability and the extent to which the pool will accept or assume such liability;

(11) Any material civil or criminal proceedings against the pool operator or any individual principal thereof.

A profile of pool operators recently compiled by the Commission’s Division of Trading and Markets from information contained in applications for registration as pool operators reveals an array of trading policies and methods of compensation employed by pool operators, as well as a wide diversity in the organizational forms and the amount of assets of pool entities. In view of the widespread differences among pool operators with respect to their managerial and trading practices, the disclosures required under proposed § 4.2(b) are critical if prospective pool participants are to make informed investment decisions.

Commodity trading is a complex field, requiring substantial skill and knowledge. A knowledge of the background and experience of each pool operator, its individual principals and any trading advisor with which the pool intends to maintain an advisory services contract appears essential to a meaningful evaluation of the services offered by those persons. In most instances in which the relationship between a commodity trading advisor and a pool is such that the adviser may be able to exercise immediate control, either directly or indirectly, over the trading decisions made by or for the pool, that relationship is evidenced by a contract or less formal agreement calling for the trading advisor to render advice to the pool or the pool operator on a regular or continuing basis or to actually manage the account of the pool. The terms “advisory services contract” is used throughout the proposed rules to describe such contracts or agreements and is defined in paragraph (d) of proposed § 4.1 as any contract or other agreement whereby a commodity trading advisor agrees:

(1) To advise another person on a regular or continuing basis as to the advisability of engaging in any transaction in a commodity interest or the holding of a market position in any commodity interest other than through the use of a market letter, or other publication of wide-spread circulation or distribution of the pool’s funds; if the pool operator or an individual principal will receive any share of such brokerage commissions or will otherwise benefit from the maintenance of the pool’s account with a futures commission merchant, the possibility exists that the pool operator or individual principal may encourage, or may fail to monitor, the issuance of trading recommendations which generate excessive commissions. The Commission believes that prospective pool participants should be made aware of any affiliation or financial arrangement between the pool operator and any individual principal or any futures commission merchant involved in the pool’s account.

The Commission believes that the disclosure of the extent in which a pool operator or its individual principals engage in or intend to engage in trading activities on their own behalf would alert prospective pool participants to the possibility that the pool operator and pool participants are subject to the abuses which may accompany this type of dual trading. This requirement also augments the regulatory scheme embodied in the record-keeping and reporting requirements set forth in section 4n(4) of the Act and proposed §§ 4.4 and 4.5. Such disclosure would also alert the prospective pool participants to the possibility of a conflict of interest resulting from the record-keeping and reporting requirements set forth in proposed §§ 4.4 and 4.5 for pool operators and individual principals who trade for their own account.

The Commission believes that a prospective pool participant should be informed about certain principal elements of trading commodity interests before investing funds in a pool engaged in such activities. The proposed regulatory requirement that all fees that may be incurred for managerial or advisory services be disclosed is designed to enable prospective pool participants to assess the costs and possibilities of returns, and thus to evaluate the performance of the pool operator and any trading advisor with which the pool intends to maintain an advisory services contract.

The proposed regulation also requires the disclosure of the performance of each account managed by a pool operator or its individual principals or any trading advisor with which the pool intends to maintain an advisory services contract in terms of the percentage of return on an investment in that account or pool for the year preceding the date on which the written disclosure statement is accepted by the prospective pool participant. The Commission recognizes that this requirement may impose substantial burdens on the pool operators. Because no requirement now exists to maintain such performance records and because such information may be more accessible to the futures commission merchants carrying such accounts, the proposed requirement for pool operators to disclose past account performance might be structured to permit them to comply with such a requirement by keeping such records after such time as these records cease to be required if the proposed regulations are adopted. The Commission requests comments with regard to the degree of inquiry which a prospective pool participant might be required in order to compile such performance records and whether such disclosures of performance should take on a prescribed format or should include certain specified information in addition to percentage of return on investment.

The Commission proposes that the disclosure of any business arrangement between a pool operator or the individual principals thereof and any futures commission merchant which may carry the account permits a prospective participant to judge whether the pool operator or its individual principals may benefit, directly or indirectly, from the brokerage commissions or the commission that may be incurred by the pool in carrying the account. If the pool operator or an individual principal will receive any share of such brokerage commissions or will otherwise benefit from the maintenance of the pool’s account with a futures commission merchant, the possibility exists that the pool operator or individual principal may encourage, or may fail to monitor, the issuance of trading recommendations which generate excessive commissions. The Commission believes that prospective pool participants should be made aware of any affiliation or financial arrangement between the pool operator and any individual principal or any futures commission merchant involved in the pool’s account.

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Proposed §§ 4.2(d) requires a pool operator to correct promptly any inaccurate material information contained in the disclosure statement of which it knows or has reason to know before the commencement of trading by the pool.

Since the inaccurate material information subsequently corrected by the pool operator may have constituted a material fact upon which the prospective pool participant relied in his initial investment decision, the pool operator is required to return the funds of any prospective participant if such participant so demands within two business days of his receipt of the amended disclosure statement. The Commission is also considering the adoption of a rule which would require a pool operator to inform a pool participant of any material changes which have occurred after trading is commenced by a pool in the information provided in the disclosure statement required under proposed § 4.2.

Proposed § 4.2(e) provides that a commodity pool operator is not relieved of any other requirement under the Act and its regulations by complying with the requirements of § 4.2. For example, the furnishing of a written disclosure statement to prospective pool participants pursuant to § 4.2 would not relieve a commodity pool operator from any obligation under section 6 of the Act, 7 U.S.C. 60, to refrain from:

1. Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant;

2. Engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon, any client or participant or prospective client or participant.

Treatment of Pool Participants’ Funds. A principal recommendation of the Advisory Committee is that the regulation of pool operators concerned the treatment of pool funds by pool operators:

Just as FCM’s must separately account for customers’ funds (and other property) and refrain from commingling them with PCM funds, pool operators should be required to give similar treatment to the funds received by the operator from pool participants, and to the funds accruing to the pool as the result of trades and other activities. These funds should be treated as belonging to the pool and segregated from the funds of the operator, except to the extent they are committed to paying the operator’s fees.

Stating that the treatment of pool funds by a commodity pool operator is especially critical “due to the complexities of futures trading and the unsophisticated nature of many pool participants,” the Advisory Committee Report concluded that it is “vital that the Commission adopt and enforce rules requiring pool operators to deal properly with the funds and other assets belonging to the pool.”

Proposed § 4.2 requires a pool operator to separately account for the funds of pool participants and prohibits the commingling of pool participants’ funds with the assets of the pool operator or other entities.

Proposed § 4.3 requires a pool operator to maintain the required records of the trading by the pool, the pool operators themselves and their individual principals by assembling an orderly collection of confirmation statements received from the futures commission merchants carrying the respective trades on the pool participants’ accounts. The pool operator would be required to retain these confirmations for the period and in the manner prescribed in § 1.31.

Proposed § 4.4 requires pool operators to retain a copy of all reports, letters, circulars, memorandums, publications, and other information as and when required by the Commission. Additionally, a pool operator must provide the Commission with an annual report of all assets and liabilities of the operator, and the number and nature of each person who is a principal of the operator. The report must be submitted within 60 days after the close of the fiscal year of the pool operator.

Proposed § 4.5 requires pool operators to furnish “regularly” to each participant in its pool operations “statement of account” for the period and in the manner prescribed in the Act, and to furnish summaries of the trading conducted by the pool operator and its individual principals during the monthly period.

Unless such copies are kept by the pool operator, compliance with this section of the Act would appear impossible.

Proposed §§ 4.6 and 4.7 provide for: (1) requiring each pool operator to keep certain books and records for each pool it operates. The required books and records include an itemized daily record of each commodity interest purchased or sold by the pool and the realized gain or loss on such transactions; a journal of all receipts and disbursements of the pool funds and monthly and annual statements of financial condition and income (loss) for the pool; as well as certain records supporting such statements. Additionally, a pool operator must keep records of each commodity interest purchased or sold by the operator or any individual principal thereof. Proposed § 4.6(c) provides that these required records be made available at the principal business office of the pool operator for inspection and copying during normal business hours and that copies of the required records be furnished immediately upon request to a pool participant.

Proposed § 4.6(d) provides that the timely and accurate reporting of individual positions taken or held by the pool operator and its individual principals is to enable pool participants and the Commission to ascertain whether pool operators are dealing properly with pool funds. It would be difficult for the pool operator to make this determination unless the pool operator maintains the books and records specified in the regulation. Proposed § 4.6(d) provides that the operator must also show the number of each type of commodity interest held, by the pool, pool operator and its individual principals during the month. The required records are designed to minimize costs of record keeping by permitting pool operators to maintain the required records of the trading by the pool, the pool operators themselves and their individual principals by assembling an orderly collection of confirmation statements received from the futures commission merchants carrying the respective trades on the pool participants’ accounts. The pool operator would be required to retain these confirmations for the period and in the manner prescribed in § 1.31.

Proposed § 4.4(b) requires pool operators to retain a copy of all reports, literature or advice that it distributes to any pool participant or prospective pool participant or that it receives from any other person or organization with which the pool maintains an advisory services contract. These provisions will work in the Act, which provides in pertinent part that:

Upon the request of the Commission, a registered * * * commodity pool operator shall submit samples or copies of all reports, letters, circulars, memorandums, publications, and other information as and when required by the Commission and that include “complete information as to the current status of all commodity positions taken or held by pool operators and their individual principals.

Proposed § 4.5 requires pool operators to furnish pool participants with two types of statements. The first is a statement showing, among other things, the net asset value of one unit of participation in the pool at the end of the monthly period and the total net asset value of all such units held by the pool participant. The monthly statement must also show the number of each type of commodity interest purchased and the number of each type of commodity interest sold by the pool operator and its individual principals during the monthly period; and the number of each type of commodity interest held, by the pool, the pool operator and its individual principals at the beginning and at the end of the monthly period.

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of each type of commodity interest pur-
chased, sold or held by the pool, pool op-
erator and its individual principals must be
itemized in each instance by respective
department or commodities, and for any
advocacy services contract, any material
changes in trading policies, and any fi-
nancial transactions between the pool and
any of its individual principals, if pool mainta-
ins an annual financial statement includ-
ing, among other things, a Statement
of Financial Condition, Statements of
Income (Loss), Changes in Financial
Position, and Changes in Ownership
Equity. The monthly statement must be
furnished to participants within fifteen
(15) days of the last day included in the
monthly period and the annual financial
statement must be furnished to participants
and to the Commission within sixty (60) days
of the last day included in the annual
statement period.

As noted above, proposed § 4.5(a)(6) re-
quires disclosure of the number of com-
modity interests purchased, sold or held
for the accounts of the pool in each com-
modity. The regulation is designed to in-
form pool participants in summary
fashion of the volume of trading in each
commodity, and would permit a com-
parison of the pool's trading activities with
any trading conducted on behalf of the pool,
operator or its individual principals. For
example, since the same type of disclosure is
required under proposed § 4.5(a) of the trad-
ing conducted by the pool operator or
its individual principals, a pool par-
ticipant could readily identify those com-
modity interests in which trading on behalf
of the pool overlapped with, or ran contrary
to, trading for the accounts of the pool
operator and its individual principals.
Furthermore, disclosure of the number of
commodity interests traded would indic-
ate, in summary fashion, the respective
volumes of trading by the pool operator;
and therefore, may in some instances indi-
cate excessive trading of the pool's ac-
count. If the pool participant, from his
review of the information revealed on the
monthly report, desires more detailed infor-
mation with respect to the purchase,
sale or holdings of commodity in-
terests by the pool, the pool operator or
its individual principals, he could, pur-
suant to proposed § 4.4(e), obtain that
information from the pool operator
immediately upon request.

The full disclosure of market positions
required by proposed § 4.4(b) of the Act
appears to have been designed to
expose potential conflicts between the
trading conducted by individual princi-

10This statement, which is required under gene-

erally accepted accounting principles, is
important because it summarizes the finan-
cial and trading activities of the pool, in-
cluding the extent to which the pool gener-
ated funds from operations. See Opinion 19
(March 1971) of the Accounting Principles
Board of the American Institute of Certified
Public Accountants, Inc.

pals for their own accounts and the trad-
ing conducted on behalf of the pool.10

However, Congress was apparently aware
that the disclosure required by section
4n(4)(B) is unnecessary or unduly burde-

nous in certain instances. Accordingly, section 4n(4)(B) permits the Commission to authorize alternatives to the "full and complete
disclosure" requirements set forth there-
in.

The Commission believes that section
4n(4)(B) may be analyzed in light of its
purposes to prevent the abuse of the rela-
tionship which exists between a pool operator and pool par-
ticipants. The less burdensome and sim-

pler reporting system of § 4.5 has been
proposed because the Commission be-
lieves it would serve the intended pur-
poses of section 4n(4)(B) by supplying
information to pool participants in a
manner which can be understood by even
untrained pool participants. The require-
ments under proposed § 4.4 that pool
operators keep accurate daily records of
their own trading activity and that of
their individual principals, if pool par-
ticipants wish, may make it possible for
records be made available to pool par-
ticipants immediately upon request, per-
mit a more detailed examination of the
trading of pool operators and their
individual principals, and permit those
trading conducted on behalf of the pool.
operator or its individual principals.

Moreover, the reports required under proposed § 4.5 would constitute an
acceptable disclosure. Thus, a yearly
managable report, even for those pools
which conduct a large volume of trading.

The Commission invites comment with
regard to any additional information,
such as the prospect of proposed § 4.4(t),
missions or management and advisory
fees, which should be set forth in the
monthly statement furnished to pool
participants. The Commission particu-
larly requests comments with regard to
the need for such information in the
monthly report in view of its availability
in the financial records required to be
kept, pursuant to section 4n(3) of the
Act, which are available to pool participa-
tes for inspection immediately upon request.

With regard to the disclosure require-
ments of proposed § 4.5, it should be
noted that the position disclosure re-
quirements of section 4n(4)(B) of the Act apply only to the "individual prin-
cipals" of a pool operator. In many in-
stances, this may result in the disclosure
of the positions of the pool operator
as well. However, in those instances
where such disclosure would not be required, the Commission believes that the poten-
tial for abuse by the pool operator of
its relationship with pool participants is
great. Accordingly, the Commission has
structured proposed § 4.5 to require that the appropriate disclosures be made
only for such persons who may control or

10Abuses by pool operators of their rela-
tionship with participants or prospective participants are likely to include activities in many forms.
For example, a pool operator may attempt to
improve the market positions of the pool operator by
pushing other pool participants to "trade
ahead" of the market orders of the pool.
Moreover, since a pool operator is often able
to influence the Act and the volume of trading conducted on behalf of the pool, the
pool operator may be in a position to: chum,
or excessively trade, the pool's accounts.

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sant to proposed § 4.4(c), obtain that
information from the pool operator
immediately upon request.
requests comments regarding the level of assets and maximum number of participants proposed in the regulation for exemption from the certification requirement. Comment is also requested on whether following trading practices should be held as of the last day of the period for counting principles. Proposed § 4.15(e) requires that the monthly and annual financial statements set forth in paragraphs (d), (e), (f), and (g) of proposed § 4.5.

The accounting practices and procedures required under proposed § 4.5(e) for pool operators are, with certain exceptions, similar to those proposed for futures commission merchants by the Commission on October 15, 1976. (See 41 FR 45766, October 15, 1976, for the Commission's proposed financial and reporting requirements applicable to futures commission merchants.) The liquidity of pool assets enhances the significance of the accounting requirements set forth in paragraphs (d), (e), (f), and (g) of proposed § 4.5.

Proposed § 4.5(e) requires compilation of financial statements in accordance with generally accepted accounting principles. Proposed § 4.5(e) requires that the monthly and annual statements for new entrants into the profession with respect to brokerage commissions, management and advisory fees, and realized net gain or loss from each commodity interest purchased or sold by the pool and the net margin of gain or loss in open positions in commodity interests held as of the last day of the period for which the report is made. Proposed § 4.5(g) requires that the monthly and annual financial statements be certified by specified officials of the pool operator.

Prohibition upon advertising of simulated trading results. Proposed § 4.6 prohibits pool operators from advertising the hypothetical results of any simulated or hypothetical transaction, series of transactions or account involving commodity interests. The Commission recognizes that this prohibition may create some difficulties for new entrants into the profession; however, the importance of restricting the potential for deception inherent in the advertising of simulated trading appears to outweigh the significance of these difficulties.

It may be relatively easy, through hindsight, to design a successful simulated account. However, since a commodity pool operator cannot be required to maintain a record of the "trades" in a simulated account because such "trades" never actually took place, it would be difficult, time-consuming and frequently impossible for a prospective pool participant or the Commission to obtain sufficiently detailed records to verify the accuracy and legitimacy of statements regarding such accounts. The validity of simulated accounts is also questionable because of the uncertainty of order execution. There may be instances in which the hypothetical trade that was "executed" for the simulated account could not have taken place in actual trading. For example, if the market in a particular contract were relatively inactive, only a portion of the "order" may have been executable at the time the "transaction" took place.

The Commission is also considering the adoption of a regulation which would place restrictions on the ability of pool operators to advertise selectively the performance of commodity pool accounts or of only certain periods of trading or trading sequences in such accounts. These restrictions would include requirements that a pool operator advertise the results of all accounts controlled by, or pools operated by, the pool operator if it chooses to advertise the results of any such account or pool, and that the pool operator advertise the long-term performance of such accounts or pools as opposed to their short-term performance.

Proposed § 4.5 would permit the Commission, in its discretion, to exempt a pool operator from any of the provisions of proposed §§ 4.1 through 4.6 if the Commission determines that such an exemption is in the public interest to be furthered by, or the purposes of, the provision from which exemption is sought. Such exemptions may be granted by the Commission upon its own motion or upon written application, and the Commission may condition the exemption as it deems appropriate. The Commission has received numerous inquiries and suggestions with regard to requirements of proposed § 4.5 and § 4.6 with respect to advertisements for certain types of pools.

The Commission requests comments regarding those specific regulations proposed for pool operators from which an exemption should be granted for certain types of pools.

Other Reporting Requirements. The Commission is also considering the adoption of requirements for pool operators under which they would be required to provide to the Commission certain information periodically regarding the pool's business and trading activities, the number of pool participants for whom they perform services, the amount of assets under their management and the volume of trading conducted for pool accounts.

ADDITIONAL REGULATION OF COMMODITY POOL OPERATORS

In addition to requesting comments on the proposed regulations, the Commission seeks comments regarding additional restrictions or requirements which should be imposed upon pool operators. Specifically, commentators' views are sought on following regulatory visions that other regulatory authorities have in the past imposed upon pool operators.24

1. Prohibition on incentive fees. Investment advisers are, with certain exceptions, generally prohibited by the Investment Advisers Act of 1940 from receiving compensation based upon the trading results achieved by their clients. Since commodity pool operators and trading advisors to a pool may perform functions similar to those of investment advisers, the Commission is considering whether to prohibit pool operators and trading advisors from charging incentive fees.

The Commission's Advisory Committee considered this prohibition at length and concluded:

The apparent reason for this prohibition [in the Investment Advisers Act] was a belief that incentive fees caused undue risk-taking by their clients. Since risk-taking is an accepted element of commodity speculation, there is no basis for prohibiting the provision to pool operators and trading advisors. In addition, there are other incentives for pool operators. The activities of commodity pool operators necessarily concern accounts, agreements and transactions involving futures contracts. In addition, Congress has granted the CFTC exclusive regulatory jurisdiction over Sections 4m, 4n, 4o and 8a of the Act, to register and otherwise to regulate trading advisor activities. But one of the major reasons that prompted Congress to amend the Act in 1974 was to avoid overlapping and duplicative regulation, which might result from the application of diverse and often conflicting laws of the various States. Senator Taft and Representative Fong, principal sponsors of the bill that became the CFTC Act, pointed to this problem during the Congressional debates. See 119 Cong. Rec. 61153 (daily ed., December 13, 1973); 120 Cong. Rec. 61692 (daily ed., September 9, 1974).

In view of this Congressional purpose, and the unambiguous language of the Act as amended, there is no basis in law for any supplementary regulation by the States.

24See 15 USC 80b-5(f).

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The Commission agrees with the conclusion of its Advisory Committee that a prohibition of incentive fees which are based on returns to services performed in conjunction with the trading of commodity interests would be unwarranted at this time and, accordingly, has not proposed such a prohibition.

While the Commission does not presently intend to bar pool operators from charging incentive fees, it is concerned about the possibility that unsophisticated traders could be induced to enter into incentive fee arrangements that result in excessive payments. For example, if an incentive fee were calculated monthly as the percentage of trading gains, without any adjustment for losses in prior months, a pool operator or trading advisor to the pool could receive substantial fees even though the value of its account declined from the beginning to the end of a yearly period. To illustrate, if a $10,000 account declined the first month to $5,000 and then rose the next month to $7,000, the advisor could possibly receive a percentage of the $2,000 "gain", although the account had incurred an overall loss for the two months. Accordingly, the Commission is considering the adoption of a rule which would prohibit incentive fees that were not based on the appreciation over the highest previous value within the past year of the account. The Commission invites comment on such a limitation on the assessment of incentive fees and on the appropriate period, yearly or otherwise, to which this restriction should apply.

2. A minimum net proceeds requirement for commodity pools formed through public solicitations. The minimum proceeds that should be collected or applied by state securities regulators are designed to assure a minimum degree of potential diversification in trading conducted by the pool.

3. A minimum net worth requirement for pool operators. The Advisory Committee recommended such a requirement, reasoning that an under-capitalized pool operator might be tempted to misappropriate assets of the pool. An under-capitalized pool operator is also vulnerable to abrupt disruptions in business operations which may injure pool participants who generally have limited liability, now have limited liability.

4. A requirement that the pool operator present and disclose the character and sources from operating commodity pools. State securities regulators have required such participation.

5. Suitability standards for pool participants. For example, pool participants might be required to have a net worth of at least $25,000 and a gross income of $20,000 per year. The Advisory Committee did not consider a net worth requirement to be an appropriate suitability standard, in light of the varying degrees of risk involved in the trading conducted by commodity pools.

6. A minimum participation requirement for pool participants. The minimums that are applied by state securities regulators range from $2,000 to $5,000.

7. A requirement that pools be structured so that participants are accorded limited liability. About eighty (80) percent of the commodity pools now in operation are organized as limited partnerships or corporations. Thus, pool participants may limit their capacity as limited partners or shareholders, now have limited liability.

8. A restriction on the amount of management or advisory fees charged by pool operators or trading advisors to the pool. For example, management fees might be limited to a certain percentage of the pool's net assets and incentive fees might be limited to a certain percentage of pool's annual profits. The Advisory Committee concluded that fee ceilings were inappropriate if the nature of all management or incentive fees were disclosed at the outset to prospective participants. The Advisory Committee recommended that a further requirement be made that such fees be disclosed at the outset to prospective participants.

9. A prohibition or greater restriction on the receipt of management or advisory fees by pool operators or trading advisors to the pool who benefit, directly or indirectly, from the handling of the pool's account by a certain futures commission merchant. For example, if a pool operator were a subsidiary of the futures commission merchant owning the pool's account, the pool's account could be prohibited from, or greatly restricted in, receiving any management or advisory fees from the pool.

10. A prohibition on the sale of additional ownership or participation units at net asset value or less, or below the pool's assets on the date trading was commenced or on the first day of the then current fiscal year of the pool. Such a prohibition on an initial offering of such units at net asset value or below the pool's assets on the date trading was commenced or on the first day of the then current fiscal year of the pool would require the pool to provide a portion of his initial contribution to the pool before it would otherwise be obtainable through redemption or other means.

11. A restriction on the borrowing of funds by pools. Such a restriction would include the pool or the pool operator from borrowing funds on behalf of the pool in order to margin market positions of the pool.

12. A limitation on the percentage of the pool's assets that may be committed as initial margin for trading in commodity interests. Certain commodity exchanges have required higher initial margin deposits for trading conducted by commodity pools than these required of other commodity accounts and certain state securities regulators have applied limits to the amount of a pool's assets which may be used as initial margin for the trading of commodity interests.

13. Restrictions on the investment of pool funds not committed as margin for trading in commodity interests. The investments that further contribute to a pool operator's earnings should be subject to the same restrictions that apply to the trading of commodity interests.
4.1 Definitions.

4.2 Commodity pool operator disclosure statement.

4.3 Treatment of funds, securities or property of pool participants or prospective participants.

4.4 Recordkeeping by commodity pool operators.

4.5 Statements to be furnished to pool participant.

4.6 Similar interest in hypothetical accounts or transactions.

4.60 Exemptions.

§ 4.1 Definitions.

For purposes of this part:

(a) The term "commodity interest" means

1. Any contract for the purchase or sale of any commodity for future delivery traded on or subject to the rules of a contract market;

2. Any agreement or transaction in interest which is or is held out to be of the character of, or is commonly known to the trade as, an "option," "right of delivery," "sale of future," "put," "call," "advance guaranty," or "decline guaranty" involving any commodity regulated under the Act other than wheat, rye, corn, oats, barley, rye, flaxseed, grain sorghums, millet, feeders, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, livestock, livestock products and frozen concentrated orange juice;

3. Any standardized contract for the delivery of silver bullion, gold bullion, or silver or gold coins or bullion, commonly known to the trade as a "margin contract" where the same home as such commodity pool operator in the management of the business and in commodities matters.

(b) The term "individual principal" means any general partner, director, officer, person performing services similar to those of a general partner, director, or officer, or holder of more than 10 percent of the equity securities or equity interest in the commodity pool operator.

(c) The "account of the commodity pool operator or individual principal thereof" includes any account in which a beneficial interest exists.

1. The commodity pool operator or an individual principal thereof;

2. Any relative or spouse of such commodity pool operator or individual principal, or any relative of such person who shares the same home as such commodity pool operator or individual principal;

3. Any trust or estate in which such commodity pool operator or individual principal or any of the persons related to such commodity pool operator or individual principal as specified in paragraph (b) (2) of this section collectively have more than 10 percent of the beneficial interest (excluding contingent interests); or

4. Any corporation or other organization of which such commodity pool operator or individual principal or any of the persons related to such commodity pool operator or individual principal as specified in paragraph (b) (2) of this section collectively are the beneficial owners of more than 10 percent of the equity securities of the corporation.

(d) The term "advisory services contract" means any contract or other agreement whereby a commodity trading advisor agrees:

1. To advise another person on a regular or continuing basis as to the advisability of the purchase or sale of any commodity or a commodity interest other than through the use of a market letter or other publication of wide-spread distribution; and

2. To manage any commodity interest account for any other person.

(f) The term "pool" means an investment trust, syndicate or similar form of enterprise described in section 2(a) (1) of the Act.

(g) The term "participant" means any individual, association, partnership, corporation, trust, or other entity, which has a right to share in the profits of the pool or otherwise to participate in a distribution of the assets thereof.

§ 4.2 Commodity pool operator disclosure statement.

(a) No commodity pool operator may, directly or indirectly, solicit, accept, or receive from any person, funds, securities, or property from any prospective participant unless, on or before the date it solicits, accepts, or receives such funds, securities, or property, each such prospective participant is furnished with a disclosure statement as specified by this section. The commodity pool operator must return any such funds, securities or property to any prospective participant if such prospective participant so demands within two business days after his receipt of the statement. A copy of this written disclosure statement must be furnished to the Commission at its principal office in Washington, D.C., within seven (7) business days of the date it is first furnished to a prospective pool participant pursuant to this section.

(b) The written disclosure statement required by paragraph (a) of this section shall set forth, at a minimum, the following information:

1. Commodity pool operator organization. The name, organizational form, net worth and principal business address of the commodity pool operator; the background and experience of the commodity pool operator in the management of commodity pools and accounts and, generally, in the management of the funds of others; the name of each individual principal of the commodity pool operator and the present business affiliations and experience of each such person within the past ten years in general business and in commodities matters.

2. General nature of the pool. With respect to the pool:

(i) Name and form of organization;

(ii) Trading objectives;

(iii) The terms and conditions of any contract between the pool and the commodity pool operator;

(iv) Any beneficial interest in the pool held or which may be held by the com-
modity pool operator or its individual principals.

(2) Nature and scope of the authority of each commodity pool operator and commodity trading advisor to the pool with respect to participants' funds;

(3) Trading strategies to be used, use of leverage available in trading commodity interests, types of investments other than commodity interests it may trade, and percentage of pool assets which may be used for such other investments.

(vii) Manner in which the commodity pool operator or any individual principal thereof engages or intends to engage in the trading of commodity interests for its own account.

(viii) Manner in which the pool or the commodity pool operator maintains an advisory services contract with the commodity futures trades or positions of any commodity trading advisor, commodity pool operator, futures commission merchant or other person will limit the commodity futures trades or positions of the pool as a result of the speculative trading and position limits set by the Commission or any contract market.

(ix) Extent of liability. The extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant to the pool.

(x) Conflicts of interest. The nature of any existing or potential conflict of interest between the pool and the commodity pool operator or any individual principal thereof.

(xi) Sales commission or fee. Any commission or other fee that is paid or may be paid directly or indirectly, by the commodity pool operator or any person in connection with the solicitation of funds, securities, or property for the purpose of participation in the pool, including any arrangements between the commodity pool operator or any individual principal thereof and such other person.

(xii) Monthly statements of account. A statement that the commodity pool operator must provide to each pool participant monthly statements of account disclosing the net asset value per participant at the close of each month during the calendar year, and the total value of all participation units held by the pool participant; the number of commodity interests purchased and the number of commodity interests sold, itemized by type and number of each, and the number of commodity interests held by such persons at the beginning and end of the calendar year; and the number of commodity interests purchased and the number of commodity interests sold, itemized by type and number of each, and the number of commodity interests held by such persons at the beginning and end of the calendar year.

(xiii) Written disclosure statement. Required by paragraph (a) of this section shall set forth prominently on the first page in boldface type:

1) A statement that the commodity pool operator must provide the written disclosure statement to each prospective pool participant on or before the date the commodity pool operator solicit, ac-
cepts, or receives funds, securities or property from such prospective pool participant, and that such prospective pool participant may demand the return of such funds, securities or property within two business days of the receipt of the written disclosure statement; and

(2) A statement that the Commodity Futures Trading Commission has not reviewed or passed upon the accuracy or adequacy of the written disclosure statement.

(d) If the commodity pool operator knows or has reason to know before the commencement of trading by the pool that any material information contained in the written disclosure statement required by this section has become inaccurate, it shall amend the written disclosure statement to correct such information and shall distribute the amended written disclosure statement to all pool participants or all prospective pool participants within five (5) business days of the date upon which the commodity pool operator knows or has reason to know of such inaccurate material information.

§ 4.3 Treatment of funds, securities or property of pool participants or prospective pool participants.

All funds, securities, and property solicited, accepted or received by a commodity pool operator to margin, guarantee, secure, settle, purchase or sell commodity interests for a pool operated by such commodity pool operator and all funds, securities, and property accruing to such pool as a result of trading in commodity interests shall be separately accounted for, segregated as belonging to such pool and not be commingled with the funds, securities, and property of any other person. Such funds, securities or property solicited, accepted or received by a commodity pool operator shall not be deposited with, or consigned to, the brokerage accounts of the individual principals thereof from each futures commission merchant carrying an account for the pool. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) days of the date of each purchase or sale. This record may be in the form of either:

(A) A daily journal or other daily record of original entry, or (B) Confirmations or similar statements received by the pool operator from each futures commission merchant carrying an account for the pool. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) days of the date of each purchase or sale

§ 4.4 Record keeping by commodity pool operators.

(a) Record keeping required. Each commodity pool operator must make and keep for each commodity pool it operates the following books and records in an accurate, current and orderly manner, at its principal business office for the period and in the manner specified in §1.31:

(1) Trading and financial records of the pool.

(i) An itemized daily record of each commodity interest purchased or sold for an account of the pool, showing the date, price, quantity, commodity interest, delivery or expiration month, the futures commission merchant carrying the account, if applicable, and whether the interest was purchased or sold.

(ii) An itemized daily record of each commodity interest purchased or sold for each account of the commodity pool operator and the individual principals thereof, showing the date, price, quantity, commodity interest, delivery or expiration month, person for whom the purchase or sale was effected, the futures commission merchant carrying the account, if applicable, and whether the interest was purchased or sold.

(b) Financial statements. (d) A statement of Financial Condition, as of the close of business of the date selected in §4.5(a), which shall be completed within twenty (20) days of that date.

(c) Commodity interests purchased or sold by the commodity pool operator and the individual principals thereof. (i) An itemized daily record of original entry or the confirmations or similar statements received by the pool operator from each futures commission merchant carrying an account for the pool. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) days of the date of each purchase or sale

(d) Each monthly statement required to be furnished to the commodity pool operator or any individual principal thereof from each futures commission merchant carrying the account for which the purchase or sale was effected. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) calendar days of the date of each purchase or sale.
ing during normal business hours at the principal business office of the commodity pool operator immediately upon his request. Copies of any portion of these records requested by any individual principal thereof must be furnished immediately to such pool participant, subject to the payment of reasonable reproduction and distribution costs.

§ 4.5 Statements to be furnished to pool participants.

(a) Monthly statement. Each commodity pool operator must furnish to each participant in a pool it operates, within twenty (20) days of the last day of each calendar month (or of any regular monthly date selected), a written statement of account as of the close of business on the last day of the calendar month (or of the regular monthly date selected). This written statement of account must contain the following information:

1. The net asset value per participation unit outstanding and the number of units used in the computation, direct or indirect, between the pool and the commodity pool operator or any individual principal thereof which occurred during the monthly period.

2. The positions in commodity interest held, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, in the accounts of the pool at the beginning and at the end of the calendar month (or corresponding monthly period), and the number of commodity interests purchased and the number of commodity interests sold, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, for the accounts of the pool during the calendar month (or corresponding monthly period): and

3. The position in commodity interest held, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, in the accounts of the individual principals thereof at the beginning and at the end of the calendar month (or corresponding monthly period); and

4. A statement that monthly financial statements and all supporting records, including records regarding each commodity interest purchased or sold for any account of the pool or for any account of the commodity pool operator or any individual principal thereof are kept at the principal business office of the commodity pool operator and must be made available to, or, upon the request of any pool participant, subject to the payment of reasonable reproduction and distribution costs, furnished to, pool participants immediately.

(b) Annual statement. Each commodity pool operator must furnish an annual statement to each participant in each commodity pool it operates, within sixty (60) days of the last day of the pool's fiscal year. The commodity pool operator must also furnish the annual statement to the Commission at its principal office in Washington, D.C., within sixty (60) days of the last day of the period to which it relates. The annual statement must contain at least the following:

1. A Statement of Financial Condition as of the close of the pool's fiscal year.

2. Statements of Income (Loss), Changes in Financial Position, and Changes in Ownership Equities for the period between the date of the most recent Statement of Financial Condition furnished to the Commission pursuant to this paragraph (or the beginning of the most recent fiscal year, if later) and the last day of the period for which the statement is made.

3. A statement that the information contained in the statement is true and correct. If the information is not correct, a statement to that effect must be made by the proprietor; if a partnership, by a general partner; and, if a corporation, by the chief executive officer and chief financial officer.

§ 4.6 Simulated or hypothetical accounts or transactions.

No commodity pool operator may publish, distribute or broadcast any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including any television or radio announcement, seminar presentation or telephonic, telegraphic or facsimile literature or advice) that refers, directly or indirectly, to the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in commodity interests.

§ 4.6 Exemptions.

The Commission may by order, upon its own motion or upon written application, exempt a commodity pool operator from any provision of this part if it finds, in its discretion, that the exemption is not contrary to the public interest.
and the purposes of the provision from which the exemption is sought. The Commission may attach such conditions to the exemption as it deems appropriate.

Interested persons may participate in this proposed rule-making proceeding by submitting comments in written form to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, Attn: Secretariat. All comments received on or before May 16, 1977, will be considered by the Commission before it takes final action on the proposed rules. Comments are also requested as to whether an oral hearing would be of value; if the Commission concludes that such a hearing would be appropriate, the time and place of the hearing will be set at a later date by public notice. Copies of all comments received regarding the proposal and the form of the rule-making proceeding will be available for inspection at the Commission's offices in Washington, D.C.

Issued in Washington, D.C., on February 9, 1977, by the Commission.

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

[FR Doc.77-4500 Filed 2-14-77;8:45 am]
COMMODITY FUTURES TRADING COMMISSION

COMMODITY TRADING ADVISORS

Proposed Comprehensive Scheme For Regulation
The Commodity Futures Trading Commission ("Commission") is proposing the adoption of new regulations under the Commodity Exchange Act ("Act"), 7 U.S.C. 1-22 (Supp. V, 1975), to establish a comprehensive scheme for the regulation of commodity trading advisors. The proposed rules would: (1) define the term "individual principal" of a commodity trading advisor; (2) require that commodity trading advisors disclose certain information prior to entering into a contract to provide regular advisory services to any other person; (3) establish record-keeping and reporting requirements for trading advisors, including that a record be kept of the trading activities of the advisor and its individual principals, and the clients and subscribers of the advisor; and (4) prohibit trading advisors from advertising the results of simulated or hypothetical trading programs.

**General Explanation**


**Proposed Rules**

Commodity trading advisors are defined in 7 U.S.C. 2 as "any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities; but does not include (1) any bank or trust company, (2) any newspaper, magazine, or business or financial publication of general and regular circulation, including their employees, (3) any floor broker or futures commission merchant, or (4) the publisher of any bona fide newspaper, magazine, or business or financial publication of general and regular circulation, including their employees, or any floor broker or futures commission merchant, or (5) any floor broker or futures commission merchant, or (6) any person not within the intent of this definition as the Commission may specify by rule, rulemaking procedures under sections 4n(4) (A) and (B) of the Act, 7 U.S.C. 6n(4) (A) and (B), which authorize the Commission to prescribe the rules and procedures for public notice and comment and the reports which must be filed by trading advisors and which permit the Commission to administer the provisions of the Act. The Act also requires commodity trading advisors to "maintain books and records in such form and manner as may be prescribed by the Commission," to furnish the Commission, upon its request, with the name and address of each client or subscriber, and a sample of all literature sent to any client or subscriber or to any prospective client or subscriber; and to make a "full and complete disclosure" to clients and prospective clients of all futures market positions taken or held by the "individual principals" of the advisor. The Act further provides that it is unlawful for any registered trading advisor to defraud or to deceive any client or subscriber or any prospective client or subscriber. The Commission's current proposals would implement these provisions of the Act and many of the recent recommendations of the Commission's Advisory Committee on Commodity Futures Trading Professionals ("Advisory Committee").

The legislative history of the statutory provisions added to the Act in 1974 to provide for the regulation of trading advisors indicates that those provisions were designed to protect clients and subscribers from abuses by trading advisors of their clients and subscribers. The justification for these provisions was based on the need to "make trading position disclosure requirements mandatory" to eliminate abuses resulting in immediate trading activity on the part of a client or subscriber in accordance with the recommendations of the advisor. In such instances, there is potential for abuse by a trading advisor of its relationship with clients and subscribers; the potential for abuse appears to be greatly diminished. The advice rendered by such trading advisors is typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in connection with their own trading decisions, and the potential for abuse appears to be greatly diminished. The advice rendered by such trading advisors is typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in connection with their own trading decisions, and the potential for abuse appears to be greatly diminished. The advice rendered by such trading advisors is typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in connection with their own trading decisions, and the potential for abuse appears to be greatly diminished. The advice rendered by such trading advisors is typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in connection with their own trading decisions, and the potential for abuse appears to be greatly diminished. The advice rendered by such trading advisors is typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in connection with their own trading decisions, and the potential for abuse appears to be greatly diminished. The advice rendered by such trading advisors is typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in connection with their own trading decisions, and the potential for abuse appears to be greatly diminished.
they may be able to exercise substantial control over the trading activities of such clients and subscribers.

In no case may the relationship between a commodity trading advisor and a client or subscriber be such that the advisor may be able to exercise immediate control, either directly or indirectly, over the trading decisions made by or for the client or subscriber, that relationship is evidenced by a contract or less formal agreement calling for the trading advisor to render advice to the client or subscriber on a regular or continuing basis or to actually manage the account of the client or subscriber. The term "advisory services contract" is used throughout the proposed rules to describe such contracts or agreements and is defined in paragraph (d) of proposed §5.1 as any contract or agreement whereby a commodity trading advisor agrees:

(i) To advise another person on a regular or continuing basis as to the advisability of engaging in any transaction in a commodity interest or the holding of a commodity interest with respect to which the trading advisor formulates its trading advice;

(ii) To engage in any transaction, practice, or course of business which operates or has the effect of creating an actual or potential conflict of interest other than through the use of a market letter, report or similar publication of wide-spread distribution; or

(d) To manage any commodity interest account for any other person.

Trading advisors engaging in such contracts would be subject to all the provisions of the proposed rules while those trading advisors which do not engage in such contracts would be subject to only certain of these provisions.

**SUMMARY OF PROPOSED RULES**

**Advisory Services Contracts: Prior Disclosure Requirements.** Paragraph (a) of proposed §5.2 provides that a commodity trading advisor is not relieved of any other requirement under the Act and the regulations thereunder by complying with the requirements of paragraph (b) of proposed §5.2. The furnishing of a written disclosure statement to clients and subscribers pursuant to §5.2 would not relieve a commodity trading advisor from any obligation under section 40 of the Act, 7 U.S.C. 60, to refrain from:

(1) Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant;

(2) Engaging in any transaction, practice, or course of business which operates or has the effect of creating an actual or potential conflict of interest;

(3) Acting dishonestly, unjustly, or fraudulently in conducting any business associated with the commodity futures business;

(4) Having any undisclosed interest or financial relationship with any person with whom the advisor refers clients or subscribers to which the advisor or its principal is to receive any share of the fees charged to the client's or subscriber's account.

A knowledge of the background and experience of a trading advisor appears essential to a meaningful prospective evaluation of the services offered. Commodity trading is a complex field, requiring substantial skill and knowledge. A prospective client or subscriber should be aware of the advisor's background and experience in order to engage in the program. Similarly, a prospective client or subscriber should be aware of the nature of the trading in commodity interests, especially the risks involved.

In this connection proposed §5.2(b)(2) provides that a commodity trading advisor or any individual principal thereof is engaged directly or indirectly (as a principal of another advisor or otherwise), within one year preceding the date the written disclosure statement is first furnished to a client or subscriber, in any business which is engaged or will engage in any commodity interest account or the trading of commodity interests for others that the advisor may be able to exercise substantial control over the trading activities of such clients and subscribers.

**Disclosure of Positions.** Section 40(4) of the Act, 7 U.S.C. 60(4), provides that:

Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors shall make a full and complete disclosure to their clients or participants of their interests in any market positions and the terms and conditions thereof, including the exchange on which the futures commission merchants are carrying such accounts, the effective date of any requirements for trading advisors to disclose past account performance might be structured to permit them to comply with such a requirement by keeping such performance records a prospective client or subscriber should be aware of the nature of trading in commodity interests, especially the risks involved.

The Commission requests comments on whether the proposed disclosure requirements should be made more strictly enforced or clarified, and on the possible requirements of a particular form for disclosure of account performance.
PROPOSED RULES

While section 4n(4) (B) requires only that "futures market positions" be disclosed, the Commission does not believe that a distinction drawn, for purposes of such disclosure requirement, between commodity futures contracts on the one hand and commodity options and leverage contracts on the other. The potential for abuse of the relationship between the trading advisor and its clients and subscribers is equally great in all three situations. Accordingly, pursuant to its authority over commodity options under sections 2(a)(1) and 4e of the Act and over leverage contracts under section 217 of the CFTC Act and pursuant to its authority under the full and complete disclosure required by section 4n(4) (B) of the Act, the Commission proposes to adopt §5.3 in a form which would require that appropriate disclosure be made by trading advisors with respect to all "commodity interests." The term "commodity interest" is defined in proposed §5.1(a) to include commodity options and leverage transactions as well as commodity futures contracts.

The requirement of section 4n(4) (B) of the Act appears to have been designed to expose potential conflicts between the trading conducted by the individual trading advisor and those clients and subscribers. On the basis of our analysis, the Commission has concluded that it may be unnecessary and unduly burdensome in certain instances. Accordingly, section 4n(4) (B) permits the Commission to authorize alternative requirements to the "full and complete disclosure" requirements of that section.

In analyzing the provisions of section 4n(4) (B), the Commission considered, among other things, the apparent purpose of that section, the types of relationships which trading advisors may have with clients and subscribers, and the burden and benefit of "full and complete disclosure" required by this section of the Act might be unnecessary or unduly burdensome in certain instances. Accordingly, section 4n(4) (B) permits the Commission to authorize alternative requirements to the "full and complete disclosure" requirements of that section.

The requirement of section 4n(4) (B) of the Act appears to have been designed to expose potential conflicts between the trading conducted by the individual trading advisor and those clients and subscribers. On the basis of our analysis, the Commission has concluded that it may be unnecessary and unduly burdensome in certain instances. Accordingly, section 4n(4) (B) permits the Commission to authorize alternative requirements to the "full and complete disclosure" requirements of that section.

In analyzing the provisions of section 4n(4) (B), the Commission considered, among other things, the apparent purpose of that section, the types of relationships which trading advisors may have with clients and subscribers, and the burden and benefit of "full and complete disclosure." Proposed §5.3 is designed to require appropriate disclosure of all trading activity in commodity interests for any account in which a trading advisor or any of its individual principals has a significant interest. In order to attain such disclosure, the Commission, in proposed §5.1(b), has defined the term "account of a commodity trading advisor or individual principal thereof" broadly, to include any account in which the trading advisor or an individual principal thereof or any relative of the trading advisor or individual principal who lives in the same home as the trading advisor of the individual principal thereof has a significant beneficial interest.

Record keeping by commodity trading advisors. Section 4n(4) (A) of the Act provides in pertinent part that:

1. Every commodity trading advisor * * * * shall furnish the name and address of each client or subscriber, including any account in which the holder of more than 10 percent of the equity interest in the trading advisor or any individual principal thereof appears to have a controlling influence or participate in the formulation of the trading decisions held by their individual principals from abusing the relationship between the trading advisor and its clients and subscribers to potential abuses with their own gain. In light of this belief, section 4n(4) (B) disclosure can be viewed in one of two ways. First, it can be seen as a deterrent to abuses not only by those persons who may directly exercise a controlling influence over the advice rendered by the trading advisor, but also by those persons who may in any way influence or participate in the formulation of the trading advisor's trading decisions. Alternatively, section 4n(4) (B) disclosure can be seen as a deterrent to persons by only those persons whose relationship with the trading advisor is such that they may control or determine the advice issued to clients and subscribers. The Commission believes that this definition is appropriate. Accordingly, the term "individual principal" is defined in §5.1 as any general partner, director, or officer of the trading advisor, or any person exercising similar functions, or any relative of the trading advisor or individual principal thereof or any relative of the trading advisor or individual principal thereof who lives in the same home as the trading advisor or any individual principal thereof.

The first two requirements set forth above are designed to implement the proposed §5.3 of the Act which requires that

Upon the request of the Commission, a registered commodity trading advisor * * * * shall furnish the name and address of each client or subscriber to whom he supplies memorandums, publications, writings, or other materials which he supplies to any client or subscriber immediately upon request.

The position disclosure requirements of section 4n(4) (B) of the Act apply only to the individual principals of a trading advisor. In most instances, this would result in the disclosure of the positions of the trading advisor as well. However, in those instances where such disclosure would not be appropriate, the Commission believes that the potential for abuse by the trading advisor of its relationships with clients and subscribers is equally as great. Accordingly, the Commission has directed its trading advisor to require that the appropriate disclosures be made concerning the trading activities of the trading advisor as well as of its individual principals.

Proposed §5.3 is designed to require appropriate disclosure of all trading activity in commodity interests for any account in which a trading advisor or any of its individual principals has a significant interest. In order to attain such disclosure, the Commission, in proposed §5.1(b), has defined the term "account of a commodity trading advisor or individual principal thereof" broadly, to include any account in which the trading advisor or an individual principal thereof or any relative of the trading advisor or individual principal who lives in the same home as the trading advisor of the individual principal thereof has a significant beneficial interest.

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The first two requirements set forth above are designed to implement the proposed §5.3 of the Act which requires that

Upon the request of the Commission, a registered commodity trading advisor * * * * shall furnish the name and address of each client or subscriber to whom he supplies memorandums, publications, writings, or other materials which he supplies to any client or subscriber immediately upon request.
other literature or advice distributed to clients [or] subscribers * * * or prospective clients [or] subscribers * * *

Unless records of such information are kept by the trading advisor, prompt compliance with this section of the Act would appear impossible.

The requirement in paragraph (a)(4) of § 5.4 that a record be kept of all commodity transactions in which the hypothetical trade that was "executed" for the simulated account account execution. There may be instances in which the hypothetical trade that was "executed" for the simulated account could not have taken place in actual trading or trading sequences in such accounts. For example, if an incentive arrangement resulted in excessive payments of the trading gains in a client's account, this prohibition may create some difficulty in the advertising of simulated results.

The record-keeping requirements set forth in § 5.4(a)(5)-(7), those relating to discretionary accounts controlled by trading advisors and to written agreements with clients and subscribers, would be of substantially similar practical effect. Similarly, even in those instances where a trading advisor does exercise control over the trading decisions of its clients and subscribers, the "full and complete disclosure" of those transactions, or copies thereof. The advisor would merely be required to retain these confirmations in an orderly manner for the period prescribed in § 1.31.

The proposed paragraph (b) of § 5.5 prohibits trading advisors from advertising the performance of any simulated or hypothetical transaction, series of transactions or trading sequences for purposes of promoting commodity interests. The Commission recognizes that this prohibition may create some difficulty for new entrants into the profession; however, the importance of restricting the potential for deception inherent in the advertising of simulated trading appears to outweigh the significance of these difficulties.

The record-keeping requirements set forth in § 5.4(a)(5)-(7), those relating to discretionary accounts controlled by trading advisors and to written agreements with clients and subscribers, would be of substantially similar practical effect. Similarly, even in those instances where a trading advisor does exercise control over the trading decisions of its clients and subscribers, the "full and complete disclosure" of those transactions, or copies thereof. The advisor would merely be required to retain these confirmations in an orderly manner for the period prescribed in § 1.31.

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It may be relatively easy, through hindsight, to provide a successful simulated account. However, since a commodity trading advisor cannot be required to maintain a record of the "trading" in a particular account because such "trades" never actually took place, it would be difficult, time-consuming and frequently impossible for a prospective client or subscriber or the Commission to verify the accuracy and legitimacy of statements regarding such accounts. The validity of simulated accounts is also questionable because of the uncertainties of order execution. This is particularly true in which the hypothetical trade that was "executed" for the simulated account could not have taken place in actual trading. For example, if a market in a particular contract were relatively inactive, only a portion of the "order" may have been executable at the assumed prices.

The Commission is also considering the adoption of a regulation which would place restrictions on the ability of trading advisors to advertise selectively the performance of only certain commodity accounts or of only certain periods of trading or trading sequences in such accounts. These restrictions would include requirements that a trading advisor advertise the results of all accounts controlled or closely advised by the advisor if it chooses to advertise the results of any such account and that the trading advisor advertise the long-term performance of such accounts rather than their short-term performance.

Exemptions. Proposed § 5.20 would permit the Commission, in its discretion, to exempt a trading advisor from any of the provisions of paragraph (a) of § 5.5 if the Commission determines that such exemption is contrary to the public interest to be furthered by, or the purpose of the provision from which exemption is sought. Such exemptions may be given by the Commission upon its own motion or upon written application, and the Commission may condition the exemption as it deems appropriate.
may accept money, securities and property from "clients and subscribers" to manage, guarantee, or secure the commodity futures trades or contracts of such other persons without registering in further capacity with the Commission. Section 2(a)(1) of the Act defines the term "commodity trading adviser" as:

**3.5 any person who, for compensation or profit, engages in the business of advising, either directly or through publications, contracts, or agreements, the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analysis or reports concerning commodities.**

Neither this definition nor any other provision of the Act mentions the acceptance by trading advisors of funds to manage, guarantee or secure the commodity futures trades or contracts of other persons.

On the other hand, section 2a(1) defines the terms "futures commission merchant" and "commodity pool operator" as, respectively:

**3.8 *individuals, associations, partnerships, cooperatives, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market, and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) in return for, or in anticipation of, or as part of a contract of such service.**

Furthermore, the regulatory provisions of this Act, and similar regulations governing commodity merchants and commodity pool operators are in many cases directed at the treatment by such persons of the funds of other persons, especially in the case of futures commission merchants, while none of the provisions relating to trading advisors deals with this subject. Accordingly, the Commission believes that any "trading advisor" who accepts funds from anyone other than a person, any portion of which is used or intended to be used to manage, guarantee or secure any commodity futures trade or contract of such other person, is either a futures commission merchant or a commodity pool operator and must register as such.19

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19It should also be noted that newly adopted §5.2 (41 FR 91808, 91814, November 24, 1976) provides that:

(a) On and after January 17, 1977, it shall be unlawful for any person, who by reason of money, securities, or property (or to extend credit in lieu thereof) from an option customer, may accept money, securities and property from "clients and subscribers" to manage, guarantee, or secure the commodity futures trades or contracts of such other persons without registering in further capacity with the Commission. Section 2(a)(1) of the Act defines the term "commodity trading adviser" as:

**3.5 any person who, for compensation or profit, engages in the business of advising, either directly or through publications, contracts, or agreements, the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analysis or reports concerning commodities.**

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Furthermore, the regulatory provisions of this Act, and similar regulations governing commodity merchants and commodity pool operators are in many cases directed at the treatment by such persons of the funds of other persons, especially in the case of futures commission merchants, while none of the provisions relating to trading advisors deals with this subject. Accordingly, the Commission believes that any "trading advisor" who accepts funds from anyone other than a person, any portion of which is used or intended to be used to manage, guarantee or secure any commodity futures trade or contract of such other person, is either a futures commission merchant or a commodity pool operator and must register as such.19

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(a) On and after January 17, 1977, it shall be unlawful for any person, who by reason of money, securities, or property (or to extend credit in lieu thereof) from an option cus-
§ 5.1 Definitions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity for future delivery traded on or subject to the rules of a contract market;

(2) Any agreement or transaction in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty” involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, milk feeds, orolein, oleomargarine, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including hardwood, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, chicken feathers, peanuts, soya bean meal, livestock, livestock products and frozen concentrated orange juice; and

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(b) The term “individual principal” means any general partner, director, officer, person performing functions similar to those of a general partner, director, or officer, or holder of more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

(c) The “account of a commodity trading advisor or an individual principal thereof” includes any account in which a beneficial interest is owned by:

(1) The commodity trading advisor or the individual principal thereof;

(2) Any relative or spouse of such commodity trading advisor or individual principal, or any relative of such spouse, who shares the same home as such commodity trading advisor or individual principal;

(3) Any trust or estate in which such commodity trading advisor or individual principal or any of the persons related to such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the beneficial interests (excluding contingent interests); or

(4) Any corporation or other organization of which such commodity trading advisor or individual principal or any of the persons related to such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively are the beneficial owners of more than 10 percent of the equity securities or interest.

(d) The term “advisory services contract” means any contract or other agreement whereby a commodity trading advisor agrees:

(1) To advise another person on a regular, systematic or ongoing basis as to the advisability of the purchase or sale of any commodity interest or the holding of a market position in any commodity interest other than through the use of a market maker or member firm within fifteen (15) days of the date the written disclosure statement is first furnished to a client or subscriber, or prospective client or subscriber, and the manner in which such percentage is calculated.

§ 5.20 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest account for any other person.

(2) Any relative or spouse of such commodity trading advisor or individual principal thereof.

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(4) Any commodity trading advisor or individual principal thereof who shares the same home as such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

§ 5.30 Record keeping.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or any such individual principal, directly or indirectly, within one year preceding the date the written disclosure statement is first furnished to a client or subscriber or prospective client or subscriber.

(3) Any trust or estate in which such commodity trading advisor or any such individual principal or any of the persons related to such commodity trading advisor or any such individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the beneficial interests (excluding contingent interests); or

(4) Any corporation or other organization of which such commodity trading advisor or any such individual principal or any of the persons related to such commodity trading advisor or any such individual principal as specified in paragraph (b) of this section collectively are the beneficial owners of more than 10 percent of the equity securities or interest.

§ 5.40 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

§ 5.50 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest or the holding of a market position in any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or individual principal thereof.

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(4) Any commodity trading advisor or individual principal thereof who shares the same home as such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

§ 5.60 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or any such individual principal, directly or indirectly, within one year preceding the date the written disclosure statement is first furnished to a client or subscriber or prospective client or subscriber.

(3) Any trust or estate in which such commodity trading advisor or any such individual principal or any of the persons related to such commodity trading advisor or any such individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the beneficial interests (excluding contingent interests); or

(4) Any corporation or other organization of which such commodity trading advisor or any such individual principal or any of the persons related to such commodity trading advisor or any such individual principal as specified in paragraph (b) of this section collectively are the beneficial owners of more than 10 percent of the equity securities or interest.

§ 5.70 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or individual principal thereof.

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(4) Any commodity trading advisor or individual principal thereof who shares the same home as such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

§ 5.80 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or individual principal thereof.

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(4) Any commodity trading advisor or individual principal thereof who shares the same home as such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

§ 5.90 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or individual principal thereof.

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(4) Any commodity trading advisor or individual principal thereof who shares the same home as such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

§ 5.100 Exemptions.

For purposes of this part:

(a) The term “commodity interest” means:

(1) Any contract for the purchase or sale of any commodity interest.

(2) Any relative or spouse of such commodity trading advisor or individual principal thereof.

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(4) Any commodity trading advisor or individual principal thereof who shares the same home as such commodity trading advisor or individual principal as specified in paragraph (b) of this section collectively have more than 10 percent of the equity securities or equity interest in the commodity trading advisor.
The Commission may, by order, upon its own motion or upon written application, exempt a commodity trading advisor or any class of commodity trading advisors from any provision of this part if it finds, in its discretion, that the exemption is not contrary to the public interest and the purposes of the provision from which the exemption is sought. The Commission may attach such conditions to the exemption as it deems appropriate.

Interested persons may participate in this proposed rule-making proceeding by submitting comments in written form to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attn: Secretariat. All comments received on or before May 16, 1977, will be considered by the Commission before it takes final action on the proposed rules. Comments are also requested as to whether an oral hearing would be of value; if the Commission concludes that such a hearing would be appropriate, the time and place of the hearing will be set at a later date by public notice. Copies of all comments received regarding the proposal and the form of the rule-making proceeding will be available for inspection at the Commission's offices in Washington, D.C.

Issued in Washington, D.C., on February 9, 1977, by the Commission.

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

[FR Doc.77-4501 Filed 2-14-77; 8:45 am]
Title 21—Food and Drugs
CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SUBCHAPTER H—MEDICAL DEVICES
[Docket No. 769—0019]
PART 801—HEARING AID DEVICES
Professional and Patent Labeling and Conditions for Sale

The Food and Drug Administration (FDA) is establishing uniform professional and patient labeling requirements and conditions for sale of hearing aid devices. The regulations prescribe the type of information that must be included in the labeling to provide all health professionals and patients with adequate directions for the safe and effective use of a hearing aid; specify the technical performance data that must be included in the labeling to ensure that hearing health professionals have adequate information to select, fit, and repair a hearing aid for a patient; and restrict the use and sale of certain hearing aids to those patients who have undergone medical evaluation within the past 6 months, but with a provision that fully informed adult patients (18 years of age or older) may waive the period of May 1976, because of personal or religious beliefs. These regulations shall become effective August 15, 1977.

In the Federal Register of April 21, 1976 (41 FR 10640), FDA published a proposed rule for the regulation of medical devices. In June 1975, the FDA issued a public inquiry to determine what steps should be taken to protect consumers from unfair or deceptive acts or practices in the sale of hearing aids. In the Federal Register of June 24, 1975 (40 FR 26646), the FTC published an "initial notice" of a proposed trade regulation rule for the hearing aid industry. The rule making record was closed on November 23, 1976. The reports of the presiding officer and the FTC staff concerning the proposed rule are now being prepared.

The essential provisions of the FTC proposed rule are: (1) A requirement that all hearing aid devices be accompanied by an adequate set of easy-to-read instructions for proper fitting, care, and repair; (2) a requirement that the sale of devices be evidenced by a written receipt that includes the date of purchase and the identity of the seller; (3) a requirement that the name of the manufacturer and the name of the hearing aid model be clearly displayed on the device; (4) a requirement that all advertising relating to the items of information that must be included in the labeling be qualified. Moreover, section 502(r) of the act limits the authority of the FTC to apply the sanctions of court injunction or criminal penalties to prevent false advertising relating to the sale of hearing aids. The Commissioner believes that the matters addressed in the proposed rule, and the Commissioner believes that both agencies will work together in pursuit of their separate mandates, as of the comparable provision under section 502(h) of the act (21 U.S.C. 352(h)), as that act relates to the dissemination of false advertisements for devices other than those in the proposed rule. Section 502(r) of the act (21 U.S.C. 352(r)), relating to prescription drugs.

Section 502(r) gives FDA jurisdiction for regulating certain specified advertising of restricted devices, and the section concurrently removes FTC authority to apply the sanctions of court injunction or criminal penalties under sections 12 through 15 of the Federal Trade Commission Act to prevent these acts. It is the Commissioner's opinion, however, that section 502(r) limits FTC authority to the extent specifically stated in the legislation, i.e., sale of devices only to restricted devices and only to pos-

competition, prices, advertising and marketing practices, research and development, government purchasing and reimbursement, etc. The role of small business, and in general, how the hearing aid industry has responded to the needs of the hearing impaired. In April of 1976 the Senate Select Committee on Investigations, chaired by Senator Charles H. Percy, also held hearings on the hearing aid industry. These hearings recommenced that many hearing-impaired consumers have a medical evaluation of their hearing impairment before purchasing a hearing aid. Senator Percy, in closing the hearings, stated that "Millions of hearing-impaired Americans are being denied top-flight treatment by a delivery system that simply is not working" (Ref. 15). As a result of testimony presented at these hearings, Senator Percy recommended that FDA promulgate regulations that would restrict the sale of hearing aids to those patients who have undergone a medical evaluation.

FEDERAL TRADE COMMISSION ACTIVITIES AFFECTING THE HEARING AID INDUSTRY

The Federal Trade Commission (FTC) has also been studying hearing aid advertising for many years. In 1974, the FTC undertook a study of the hearing aid industry. The FTC has examined consumer complaints concerning hearing aid sellers; (5) the improper use of the term "hearing aid" for devices that do not meet the definition of hearing aid as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(r)), which provides that a restricted device will be deemed to be misbranded unless all advertising concerning the device is accompanied by a device statement with respect to it (1) the device's established name, (2) a brief statement of the intended uses of the device, relevant warnings, precautions, side effects, and contraindications, and (3) in instances in which it is necessary to protect the public health, include a description of the components of the device or its formula. Section 503(r) further provides that an advertisement for a restricted device shall not, with respect to matters covered by section 502(r) or covered by regulations issued under that section, include any statement, representation, or omission that is false or misleading.

In sum, it is the Commissioner's opinion that the net effect of section 502(r), as of the comparable provision under section 502(n) relating to prescription drugs, is to enable each agency to approach the regulation of restricted devices from the perspective of its particular statutory mandate. It is also the Commissioner's belief that both agencies will contribute to the end of the problem, rather than simply raise the same problems again in the past, to work together in pursuit of the public interest, but closely related mandates. The Food and Drug Administration has long been aware of the FTC activities in the regulation of hearing aids that led to the FTC proposed rule, and the Commissioner believes that FTC staff concerning the proposed rule are now being prepared.

The essential provisions of the FTC proposed rule are: (1) A requirement that all hearing aid devices be accompanied by an adequate set of easy-to-read instructions for proper fitting, care, and repair; (2) a requirement that the sale of devices be evidenced by a written receipt that includes the date of purchase and the identity of the seller; (3) a requirement that the name of the manufacturer and the name of the hearing aid model be clearly displayed on the device; (4) a requirement that all advertising relating to the items of information that must be included in the labeling be qualified. Moreover, section 502(r) of the act limits the authority of the FTC to apply the sanctions of court injunction or criminal penalties to prevent false advertising relating to the sale of hearing aids. The Commissioner believes that the matters addressed in the proposed rule, and the Commissioner believes that both agencies will work together in pursuit of their separate mandates, as of the comparable provision under section 502(h) of the act (21 U.S.C. 352(h)), as that act relates to the dissemination of false advertisements for devices other than those in the proposed rule. Section 502(r) of the act (21 U.S.C. 352(r)), relating to prescription drugs.

Section 502(r) gives FDA jurisdiction for regulating certain specified advertising of restricted devices, and the section concurrently removes FTC authority to apply the sanctions of court injunction or criminal penalties under sections 12 through 15 of the Federal Trade Commission Act to prevent these acts. It is the Commissioner's opinion, however, that section 502(r) limits FTC authority to the extent specifically stated in the legislation, i.e., sale of devices only to restricted devices and only to pos-

general. The regulations prescribe the types of information that must be included in the labeling to provide all health professionals and patients with adequate directions for the safe and effective use of a hearing aid; specify the technical performance data that must be included in the labeling to ensure that hearing health professionals have adequate information to select, fit, and repair a hearing aid for a patient; and restrict the use and sale of certain hearing aids to those patients who have undergone medical evaluation within the past 6 months, but with a provision that fully informed adult patients (18 years of age or older) may waive the period of May 1976, because of personal or religious beliefs. These regulations shall become effective August 15, 1977.

In the Federal Register of April 21, 1976 (41 FR 10640), FDA published a proposed rule for the regulation of medical devices. In June 1975, the FDA issued a public inquiry to determine what steps should be taken to protect consumers from unfair or deceptive acts or practices in the sale of hearing aids. In the Federal Register of June 24, 1975 (40 FR 26646), the FTC published an "initial notice" of a proposed trade regulation rule for the hearing aid industry. The rule making record was closed on November 23, 1976. The reports of the presiding officer and the FTC staff concerning the proposed rule are now being prepared.

The essential provisions of the FTC proposed rule are: (1) A requirement that all hearing aid devices be accompanied by an adequate set of easy-to-read instructions for proper fitting, care, and repair; (2) a requirement that the sale of devices be evidenced by a written receipt that includes the date of purchase and the identity of the seller; (3) a requirement that the name of the manufacturer and the name of the hearing aid model be clearly displayed on the device; (4) a requirement that all advertising relating to the items of information that must be included in the labeling be qualified. Moreover, section 502(r) of the act limits the authority of the FTC to apply the sanctions of court injunction or criminal penalties to prevent false advertising relating to the sale of hearing aids. The Commissioner believes that the matters addressed in the proposed rule, and the Commissioner believes that both agencies will work together in pursuit of their separate mandates, as of the comparable provision under section 502(h) of the act (21 U.S.C. 352(h)), as that act relates to the dissemination of false advertisements for devices other than those in the proposed rule. Section 502(r) of the act (21 U.S.C. 352(r)), relating to prescription drugs.

In sum, it is the Commissioner's opinion that the net effect of section 502(r), as of the comparable provision under section 502(n) relating to prescription drugs, is to enable each agency to approach the regulation of restricted devices from the perspective of its particular statutory mandate. It is also the Commissioner's belief that both agencies will contribute to the end of the problem, rather than simply raise the same problems again in the past, to work together in pursuit of the public interest, but closely related mandates. The Food and Drug Administration has long been aware of the FTC activities in the regulation of hearing aids that led to the FTC proposed rule, and the Commissioner believes these activities complement, rather than conflict with, this FDA regulation relating to labeling and conditions of sale of hearing aids. The Commissioner generally supports the FTC proposed rule and believes that the matters addressed therein are particularly within the FTC statutory mandate and expertise.

GENERAL COMMENTS ON THE PROPOSED REGULATIONS

Many comments on the proposed regulations asserted that the proposal did not adequately deal with several major concerns about the present hearing aid and health care delivery system. The inadequacy or absence of State licensing laws in requiring minimum competency standards for persons who dispense hearing aids was often mentioned in the comments.
The Commissioner recognizes that the professional and patient labeling regulations and restrictions on the sale of hearing aids are only a partial solution to the complex health care delivery system, and that these regulations do not address the adequacy of existing State licensing laws that control the dispensing of hearing aids. The Commissioner notes also that the hearings before the Senate Permanent Subcommittee on Investigations of the Hearing Aid Industry (Ref. 15) produced testimony that the competency and training of hearing health professionals, whether physicians, audiologists, or hearing aid dispensers, was of utmost importance to the delivery of quality hearing aid health care services. The Commissioner notes, however, that the Federal Food, Drug, and Cosmetic Act regulates the safety, effectiveness, and labeling of the hearing aid itself, State and local licensing laws, as administered by State and local agencies, usually provide the appropriate legal mechanisms for establishing minimum competency standards for the practice of a health profession or medical specialty. A detailed discussion of such licensing laws is to establish standards for the various activities within their purview and to exclude from activities those persons who will not, or cannot, conform to those standards. Such licensing statutes thereby protect the public against unqualified and incompetent practitioners in the health professions and other occupations affecting the public health and safety.

The Commissioner is aware of the efforts of the American Speech and Hearing Association, the National Hearing Aid Society, and other professional organizations to develop minimum competency standards for testing hearing loss for the purpose of selecting and fitting hearing aids. The proposed regulations would not be included in a characterization of the hearing health care team. The various services provided by hearing aid dispensers, such as testing hearing for selecting and fitting hearing aids, motivating and preparing hearing aid candidates, making impressions for ear molds, selecting and fitting hearing aids, counseling hearing-impaired persons on adapting to and repairing damaged hearing aids are regarded by many of the hearing impaired as indispensable to their welfare. Many hearing aid users wrote to FDA supporting the proposed regulations, which required as a condition of sale that a person with a hearing impairment lack the motivation to try a hearing aid or believes a stigma is attached to wearing a hearing aid. In general, the audiology objected to wording in this section, which identified hearing aid specialists (audiologists or hearing aid dispensers) as hearing health professionals and legitimate members of the hearing health care team. Many audiologists stated that it was inaccurate to recognize hearing aid dispensing as a profession because many hearing aid dispensers have little academic training.

The Commissioner rejects the contention that hearing aid dispensers should not be included in a characterization of the hearing health care team. The Commissioner believes that necessary improvements in the quality of hearing aid health care services depend largely on hearing aid dispensers recognizing their obligation to provide for minimal Federal and local licensing statutes thereby protect the public against unqualified and incompetent practitioners in the health professions and other occupations affecting the public health and safety.

A section in the preamble to the FDA proposed regulations entitled "Hearing Health Care Industry (Ref. 15) produced testimony that suggested that many elderly Americans do not have hearing aids because of their high cost. Although FDA does not have any discretionary authority to influence the price of hearing aids, the Commissioner recognizes that ill-conceived and unnecessary regulations could cause the price of hearing aids to rise, thus creating an additional barrier to the delivery of hearing aid health care services. For this reason, FDA has judiciously exercised its rulemaking authority to provide for minimal Federal and local licensing standards, thus increasing the protection of the public health in the delivery of hearing aid health care services. This approach recognizes the limitations of FDA statutory authority in dealing with such factors as the cost of a hearing aid and the inadequacy or absence of State licensing laws.

The Commissioner also recognizes that personal motivation often plays a major role in the purchase of a hearing aid by a person who has a hearing impairment will seek assistance. Information collected by the HEW Intra-departmental Task Force on Hearing Impaired indicated that 10 million hearing impaired persons have not received medical attention to assess their hearing loss and to determine what steps, if any, can be taken to improve their hearing. The Commissioner believes that it is of paramount importance that any FDA regulations intended to protect the health and safety of the hearing impaired be positive in orientation and not create unnecessary economic or psychological barriers to the receipt of quality hearing aid health care. For these reasons, the Commissioner has concluded, however, that necessary improvements in the quality of hearing aid health care services depend largely on hearing aid dispensers recognizing their obligation to provide for minimal Federal and local licensing laws, as administered by State and local agencies, usually provide the appropriate legal mechanisms for establishing minimum competency standards for the practice of a health profession or medical specialty.

The Commissioner recognizes that the accessibility of hearing aid services is of great importance to the quality of hearing aid health care services. The hearing aid dispenser is the most accessible member of the hearing aid health care team, and the hearing aid dispenser sees the person objectively. Many hearing aid dispensers with very limited knowledge of hearing impairment were not included in a characterization of the hearing health care team. The Commissioner regards the hearing aid dispenser as an important member of the hearing health care team, strategically positioned within the delivery system to provide the hearing aid user with essential services.

The Commissioner has concluded, however, that necessary improvements in the quality of hearing aid health care services depend largely on hearing aid dispensers recognizing their obligation to provide for minimal Federal and local licensing statutes thereby protect the public against unqualified and incompetent practitioners in the health professions and other occupations affecting the public health and safety.

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other physicians who commented that hearing impairment is of extreme im-
potence to the health and safety of the
impaired patient. The American
Council of Otolaryngology pointed
out that some of the causes for sensori-
nal hearing loss include conditions
such as brain tumor, syphilis, endocrine
disorder, and endolymphatic hydrops. Accordingly, the final
regulation continues to require as a con-
dition for sale, that a person, as a gen-
eral rule, have obtained a medical evalu-
ation from a licensed physician within the
preceding 6 months before he is sold a
hearing aid. The Commissioner has
determined that the medical evaluation is
necessary to protect the health and
safety of hearing-impaired patients be-
cause patients, audiologicals, and hearing
aid dispensers are unable to differenti-
ate, diagnose, evaluate, and treat the
medical causes or causes of a hearing im-
pairment.

The Commissioner emphasizes, how-
ever, that the primary health concern
underlying the medical evaluation re-
quirement is to determine the existence of
any direct risk to a user from the hearing
aid itself; rather, the medical evaluation
requirement is based upon the recogni-
tion that an unnecessary or partially
effective medical evaluation is not sub-
situted for primary medical or surgical
treatment, thus depriving the hearing-
impairment patient of benefit of appropri-
ate medical diagnosis and care and re-
sulting in delaying proper medical diag-
ositon or therapy, which may result in
cutting the efficacy of the correct treatment, purchase of a
hearing aid device that may not achieve its intended effect involves a high and
unnecessary cost to the patient.

A number of comments indicated that
there is some confusion about the purpose of the medical evaluation requirement in
the proposed regulations. Simply stated, the
purpose of the medical evaluation by
a licensed physician is to assure that all
medically treatable conditions that may
affect hearing are accurately identified
and properly treated before a hearing aid
is bought. It should be emphasized that
the medical evaluation requirement does
not require the physician to prescribe,
recommend, or certify that a patient may
be helped by a hearing aid. The propos-
ition simply requires that the physician
provide the patient with a written state-
ment indicating that the patient's hear-
ing loss has been medically evaluated and
the patient may be considered a candidate
for a hearing aid.

The Commissioner notes that a hear-
ing aid device is not an inherently dan-
gerous device and that the number of
persons who will in fact require a medical or surgical treatment is relatively small
in comparison to the number of indivi-
duals who merely require information.
For this reason, FDA has attempted to
design the medical evaluation require-
ment to reflect the practical and logistical
problems of medical evaluation, the
capabilities of licensed physicians, the
mobility of the hearing impaired, and the
personal and religious beliefs of those
people who refuse to consult with
physicians.

Several consumers wrote that since the
hearing impaired patient is paying for
the hearing aid and subsequent serv-
ices, any medical evaluation requirement
is ultimately an infringement of individ-
ual rights. These persons emphasized that
currently it is a personal decision whether or not to see a physician. Other
consumers objected to a medical evalu-
ation on the basis of philosophical and
religious freedom of choice. For this reason, FDA has attempted
to design the medical evaluation require-
ment to reflect the practical and logistical
problems of medical evaluation, the
capabilities of licensed physicians, the
mobility of the hearing impaired, and the
personal and religious beliefs of those
people who refuse to consult with
physicians.

The American Speech and Hearing As-
sociation and many audiologists com-
mented that a mandatory audiological
evaluation by an audiologist should be
required by Federal regulation as a con-
dition for sale of a hearing aid. The Com-
misioner has concluded that the absence of
any of the seven otologic conditions indicates that there is no need
to obtain a medical evaluation.

The Commissioner believes, however, that
the designated otologic conditions continue to serve as useful warning sig-
als that could help encourage a prospective
dispenser to use in determining whether
the prospective hearing aid user is able
correctly to use the hearing aid device.
The Commissioner concluded that the health interest of the prospective
user would be best served by retaining the medical evaluation requirement.

The Commissioner notes that a hearing
aid device that may not achieve its intended effect involves a high and
unnecessary cost to the patient.

The Commissioner has concluded that
the final regulation should grant a
waiver of the medical evaluation re-
quirement that a patient obtain certain
medical evaluations. The Commissioner
noted that undue importance has been
attached to the seven designated otologic
conditions by incorporating these con-
ditions into the waiver provision. In the
final rule, the seven designated otologic
conditions were to serve as screening criteria for the hearing aid
dispenser to use in determining whether
the prospective hearing aid user could
exercise the waiver to the medical evalu-
ration requirement. The Commissioner
has concluded that the health interest of
the prospective user would be best
served by retaining the medical evaluation.

The Commissioner notes that a hearing
aid device that may not achieve its intended effect involves a high and
unnecessary cost to the patient.
mandatory audiological tests from an audiologist is not appropriate at this time. The Commissioner recognizes that the record does not justify requiring mandatory audiological evaluation to determine hearing aid candidacy or patient benefit from the use of amplification. Moreover, such tests would not create an additional barrier to the receipt of a hearing aid device in those areas of the country where audiological services are scarce. Such a requirement also would increase the cost of obtaining a hearing aid without providing any conclusive assurance that the patient would benefit from amplification.

Because of the difficulty of determining in advance which individual will benefit from a hearing aid, FDA supports the requirement of a trial-rental or purchase-option plan embodied in the FTC proposed rule, which will afford every prospective hearing aid user the opportunity to wear the selected hearing aid in a variety of situations during which the hearing-impaired user can make an informed decision. The Commissioner believes that a trial-rental option is better than mandatory audiological tests in determining patient benefit from amplification.

The Commissioner is aware that the FTC proposed rule requiring a mandatory trial-rental period will not be promulgated for some time. But the National Hearing Aid Society and several hearing aid manufacturers have adopted voluntary trial-rental or purchase-option programs for prospective hearing aid users. The Commissioner believes that these voluntary actions are important enough to consider the requirement that hearing-impaired patients be required to wear the User Instructional Brochure contain information advising prospective hearing aid users to inquire about the availability of a trial-rental program with the prospective dispensers. The Commissioner has concluded that the User Instructional Brochure should contain special reference to the need for medical evaluation before the person experiencing the hearing impairment is a child.

RESPONSES TO SPECIFIC COMMENTS

1. Three comments suggested that in the definition of "hearing aid" the term "designated" should be changed to "designed" so as to conform to the definition in the proposed rule by the FTC.

The Commissioner agrees with these comments and the change is made. The Commissioner notes that the definition for "hearing aid" as used in the regulation includes over-the-ear, in-the-ear, eyeglass, and on-the-body type air-conduction hearing aids. One comment noted that group auditory trainers, defined as a group amplification system purchased by a qualified school or institution for the purposes of increasing the auditory environment of children with hearing impairments, would fall under the definition of "hearing aid" as used in the proposed rule. The comment further noted that it would be inappropriate to apply the proposed conditions for sale for hearing aid devices to group auditory trainers.

The Commissioner agrees with this comment and a change is made in the regulation so that the normal conditions for sale requirements do not apply to this special type of hearing aid.

2. Ten comments suggested that the definition of "seller" should be changed to indicate clearly that it applies to any person or entity who dispenses a hearing aid and who lacks the motivation to try a hearing aid because of the fear that they will spend a great deal of money with no guarantee of benefit.

Although the final regulation does not require mandatory audiological evaluation as a condition for sale of a hearing aid, the Commissioner recognizes that the audiologist is an important member of the hearing care team, qualified by academic and clinical training to assist in the prevention, identification, evaluation, and rehabilitation of persons with auditory disorders that impede or prevent the reception and perception of speech and other auditory signals. In addition to basic audiometric evaluation, audiologists may provide hearing aid orientation, auditory training, speech reading, voice conservation, language development, and counseling and guidance services. The audiologist often provides health related services to children and adults with congenital or acquired disorders affecting hearing and/or expressive language impairment, stuttering, chronic voice disorders, and serious articulation and vocalization difficulties. Hearing aid problems accompanying conditions of hearing loss, e.g., palatal, cerebral palsy, mental retardation, emotional disturbance, multiple handicapping conditions, and other sensory and health impairments.

Because hearing loss may impede or prevent the reception and perception of speech and other acoustic signals, the Commissioner expects that the User Instructional Brochure contain advice that a child with a hearing loss should be directed to a audiologist for evaluation and rehabilitation. The Commissioner considers that a hearing aid is effective if it is prescribed, used, maintained, and fitted in accordance with the professional judgment on whether a benefit from a hearing aid, FDA supports the requirement of a trial-rental or purchase-option plan embodied in the proposed rule where every prospective hearing aid user is aware of the professional role of the Medical evaluation, the User Instructional Brochure, and the required notices to the prospective purchaser are equally necessary to the protection of the consumer whether the transaction is in the form of sale or lease or rental.

Accordingly, these comments are rejected.

4. Seven comments suggested that the term "olotaryngologist" (ear specialist) and "audiologist" be redefined in the final regulation. The FTC proposed rule also requires that a "used hearing aid" be designated as such. The Commissioner believes that there should be conformity in this area and is adopting the definition included in the FTC proposed rule.

5. One comment suggested that the term "used hearing aid" should be defined, since the hearing aid dispenser must designate a "used hearing aid" as such. The Commissioner pointed out that it may not be clear at what point a hearing aid becomes a "used hearing aid."

The Commissioner agrees with these comments and defines a "used hearing aid" in the final regulation. The FTC proposed rule also requires that a "used hearing aid" be designated as such. The Commissioner believes that there should be conformity in this area and is adopting the definition included in the FTC proposed rule.

6. Various comments addressed the proposed labeling required to be placed on the hearing aid device, which included the name of the manufacturer or distributor, the model name, serial number, and the month and year of manufacture. Five comments suggested that the month and year of manufacture would not fit on some of the smaller hearing aid units. Eight comments noted that the year of manufacture is irrelevant in that hearing aid models are not changed every year and therefore the fact that a hearing aid was manufactured in a previous year does not indicate that it is not the latest model. The Commissioner further noted that the month of manufacture is certainly irrelevant. Four comments suggested that including the month and year of manufacture on hearing aids could not be implemented by manufacturers and dispensers because dispensers would be unwilling to order in advance, fearing that the hearing aids would remain on their shelves for some time. The Commissioner agreed that customers would consider them outdated.

The preamble to the proposed regulation stated that this information was required to be placed on hearing aids for several reasons: To assure that the hear-
Brochure contain information regarding how and where to obtain repair service, list of suitable replacement batteries for a hearing aid, information written to provide examples of such conditions. The User Instructional Brochure is required to include reference to the appropriate month as well as the year of manufacture. The Commissioner emphasizes that the User Instructional Brochure is intended to provide a statement of such conditions that the hearing aid user may reasonably encounter that the dispenser would inform the user of any need for counseling during the adjustment period. A hearing aid will not restore normal hearing because hearing loss is often irreversible, but it will increase the ability of the user to distinguish different sounds. As a result, some hearing aid users become discouraged in the process of adapting to the use of a hearing aid, put the hearing aid aside, and discontinue its use in auditory habilitation.

The Commissioner believes that the User Instructional Brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispensers. It is useful to the person with the total health and social well-being of the hearing-impaired person, and that there is a need to pursue a comprehensive and vigorous attack on hearing problems. Many people with hearing problems are not aware of the necessity and availability of auditory training and instruction in lipreading. The Commissioner thereupon amends the statement that this statement should be retained in the User Instructional Brochure.

The Commissioner agrees with these comments and amends the final regulation to require that the User Instructional Brochure include technical data relating to the hearing aid. The Commissioner believes that such conditions would not be actual side effects from the use of the hearing aid but would be the result of misevaluation of the hearing problem or the result of a medical problem unrelated to the hearing aid itself.

But two comments mentioned that the hearing aid may secrete additional cerumen (ear wax) to protect against the foreign object, i.e., the earmold, and that this would necessitate more frequent cleaning of the cerumen from the ear.

The Commissioner agrees with these comments and is amending the final regulation to require that the User Instructional Brochure include the statement that the hearing aid is only part of hearing aid use. It is therefore rejects these comments. The final regulation requires that all hearing aids be manufactured so that it is physically impossible to insert the battery in the reversed position.

Such a requirement would be of little value to the hearing aid user and would require a major redesign of many hearing aids, thus increasing the cost of hearing aids. The comment is therefore rejected.

Five comments said that the requirement that the User Instructional Brochure contain an illustration of the hearing aid adjustments should be modified to require that only those adjustments be illustrated. These comments pointed out that users would otherwise make adjustments which only qualified individuals should make and this would cause unnecessary problems in the use of the aid.

The Commissioner agrees with these comments and the change is made accordingly.

Three comments said that it would be very difficult to compile a complete list of suitable replacement batteries for inclusion in the User Instructional Brochure, as required by the proposed regulation, and that it would be better to require only a generic designation of replacement batteries.

The Commissioner agrees with these comments and the change is made.

Four comments said it would be impossible to list all repair facilities, as required by the proposed regulation. The Commissioner agrees that it would be difficult to list all repair facilities and feels that a more general statement is desirable. As a result, the final regulation requires that the User Instructional Brochure contain information regarding how and where to obtain repair service, including a specific address, or addresses, where the user can go or send the hearing aid to have the repair done.

Three comments said that the User Instructional Brochure contain a description of environmental conditions that the hearing aid user may reasonably encounter that could adversely affect the hearing aid is being used. The Commissioner agrees with these comments and the requirement is restated to require that only user adjustments be modified. These comments pointed out that the dispenser should inform the user that the hearing aid is changed to “model name or number.” This may ease the problem of including all this information on the smaller hearing aid units. The final regulation is also being changed to require that only the year, and not the month, of manufacture be marked on the hearing aid. Requiring that the month as well as the year of manufacture be marked on the hearing aid adds little to the solution of the problems necessitating this requirement, and omitting the requirement will reduce the amount of information to be included in the User Instructional Brochure.

About the requirement that hearing aids be marked with a “-+” symbol to indicate the positive connection for battery insertion, one comment suggested that FDA should require that all hearing aids be manufactured so that it is physically impossible to insert the battery in the reversed position.

Such a requirement would be of little value to the hearing aid user and would require a major redesign of many hearing aids, thus increasing the cost of hearing aids. The comment is therefore rejected.

Five comments said that the requirement that the User Instructional Brochure contain a statement that the hearing aid should be worn at all times. The Commissioner has, however, modified the statement to clarify that it does not apply in all situations. The Commissioner believes that it is the responsibility of hearing aid dispensers to obtain sufficient information from the user regarding his type of environmental conditions that the hearing aid user may reasonably encounter that could adversely affect or damage the hearing aid.

Two comments mentioned that the hearing aid may secrete additional cerumen (ear wax) to protect against the foreign object, i.e., the earmold, and that this would necessitate more frequent cleaning of the cerumen from the ear.

The Commissioner agrees with these comments and is amending the final regulation to require that the User Instructional Brochure include the statement that the hearing aid is only part of hearing aid use. A hearing aid will not restore normal hearing because hearing loss is often irreversible, but it will increase the ability of the user to distinguish different sounds. As a result, some hearing aid users become discouraged in the process of adapting to the use of a hearing aid, put the hearing aid aside, and discontinue its use in auditory habilitation.

The Commissioner believes that the User Instructional Brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispensers. It is useful to the person with the total health and social well-being of the hearing-impaired person, and that there is a need to pursue a comprehensive and vigorous attack on hearing problems. Many people with hearing problems are not aware of the necessity and availability of auditory training and instruction in lipreading. The Commissioner thereupon amends the statement that this statement should be retained in the User Instructional Brochure.

Five comments suggested that the proposal did not include several side effects from the use of the hearing aid. These comments noted that the manufacturer should not be required to warn consulting with a physician, and that should be included in the User Instructional Brochure. These include tinnitus, headaches, dizziness, pain in the ear, blockage, loss of balance, fatigue, additional hearing loss, active drainage, and sudden hearing loss.

Another believes that such conditions would not be actual side effects from the use of the hearing aid but would be the result of misevaluation of the hearing problem or the result of a medical problem unrelated to the hearing aid itself.

Five comments objected to the requirement that the User Instructional Brochure include the statement that in the process of adapting to the use of a hearing aid, put the hearing aid aside, and discontinue its use in auditory habilitation.

The proposed regulation provided that the medical evaluation could not be unwarranted if the prospective purchaser exhibited any one of seven listed conditions:

1. Visible congenital or traumatic deformity of the ear.
2. History of active drainage from the ear within the previous 90 days.
3. History of sudden or rapidly progressive hearing loss within the previous 40 days.
4. Acute or chronic dizziness.
5. Unilateral hearing loss of sudden or recent onset within the previous 90 days.
6. Airborne noise level equal to or greater than 120 decibels (dB) at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz.
7. Visible evidence of cerumen accumulation or a foreign body in the ear canal.

Many comments questioned whether dispensers would determine the existence of these conditions. Others questioned the completeness of the list.

The final regulation requires that all prospective hearing aid users obtain a medical evaluation to determine the cause of their hearing loss before pur-
chase of a hearing aid, unless the medical evaluation is specifically waived. The regulation also requires that each prospective user be provided with a User Instructional Brochure, which emphasizes the importance of medical evaluation. Although a waiver of the medical evaluation requirement is allowed, the hearing aid dispenser is prohibited from actively encouraging the use of this waiver.

The Commissioner wishes to avoid creating the impression that a medical evaluation is needed only if the enumerated symptoms are exhibited. As a result, the Commissioner is removing these seven conditions from the waiver provision. The final regulation requires that the hearing aid dispenser advise the prospective user to consult promptly with a licensed physician (preferably a physician who specializes in diseases of the ear) if the dispenser observes any of the listed conditions in the prospective user.

The original list of seven conditions was developed by the American Council of Otolaryngology (ACO) for use as a screening procedure by hearing aid dispensers. Although hearing aid dispensers cannot diagnose the cause of hearing loss, the Commissioner agrees with the ACO that hearing aid dispensers can recognize symptoms of medical problems. The Commissioner expects that the hearing aid dispensers will be conscientious in impressing the importance of a medical examination upon prospective users exhibiting any of these symptoms.

One condition, pain or discomfort of the ear, has been added to the seven listed, because such pain or discomfort would indicate a medical problem that should be diagnosed and treated.

As stated in the preamble to the proposed regulation, this statement was based on a recommendation from the Academy of Rehabilitative Audiology (ARA). It was stated by ARA that its recommendation was based on information available on the hazardous effects of high-level industrial and environmental noise and on certain scientific articles that advise caution in fitting high-output hearing aids. The Commissioner notes that 132 dB might eventually be determined to be too high and some lower level should be substituted but that, in the absence of prospective users exhibiting any of these symptoms, this statement should be included in the regulation as proposed.

To avoid unnecessarily alarming persons who have reservations about hearing aids, the Commissioner believes that this statement should be required only for hearing aids whose maximum sound pressure capability exceeds 132 dB. The Commissioner expects that hearing health professionals will take the possible side effects from a high-output aid into consideration in selecting and fitting a hearing aid. Under the final regulation, this statement is required to be included in the warning statement entitled "Warning to Hearing Aid Dispensers."

The "Important Notice for Prospective Hearing Aid Users" does point out that Federal law restricts the sale of hearing aids. Upon the effective date of the regulation, hearing aids will become restricted devices under section 520(e) of the Federal Food, Drug, and Cosmetic Act. The Commissioner believes that it is necessary to protect prospective hearing aid users from misleading claims about the benefits to be expected from a hearing aid. The Commissioner agrees with the ACO that such a waiver would be unnecessary and that it would be necessary for the Commissioner to follow the procedures of section 514 of the Medical Device Amendments of 1976 to establish performance standards.

The "Important Notice for Prospective Hearing Aid Users" does point out that Federal law restricts the sale of hearing aids. Upon the effective date of the regulation, hearing aids will become restricted devices under section 520(e) of the Federal Food, Drug, and Cosmetic Act. The Commissioner believes that it is necessary to protect prospective hearing aid users from misleading claims about the benefits to be expected from a hearing aid. The Commissioner agrees with the ACO that such a waiver would be unnecessary and that it would be necessary for the Commissioner to follow the procedures of section 514 of the Medical Device Amendments of 1976 to establish performance standards.

If it is necessary to protect prospective hearing aid users from misleading claims about the benefits to be expected from a hearing aid, then the Commissioner believes that it is necessary to establish performance standards for hearing aids. The regulations do not require that the technical data, required to be provided in the User Instructional Brochure in accordance with the test procedures of the Acoustical Society of America, Standard for Specification of Hearing Aid Characteristics, ASA STD 7-1976 (previously ANSI S3.22-1976). These comments generally pointed out that it was inappropriate for the Commissioner to establish such a test-reference requirement. One of these comments argued that it would be necessary for the Commissioner to establish a test-reference requirement. On the other hand, the Commissioner believes that it would be unnecessary to require that the technical data requirement is needed and is authorized by section 701(a) of...
Federal Food, Drug, and Cosmetic Act
for the effective enforcement of section 502 of the act, and that the labeling require ment generally stated that it is necessary to that consumers should not be forced to see a physician if they do not want to, that the requirement would add an unnecessary cost to the already high cost of hearing aids, and that patients are not generally aware of the capabilities of hearing aids, even when such use is appropriate.

The Commissioner has determined that it is very important that all medically treatable conditions that may affect hearing be identified and treated before the hearing aid is purchased. The physician is the only person who is qualified to make a medical diagnosis and treatment. People with remediable ear disease do not receive medical attention, and rely solely on a hearing aid until the disease is no longer regarded as medically treatable. One purpose of the medical evaluation requirement is to prevent treatable conditions from going undiagnosed and untreated.

The period between purchases is not expected to add considerably to the cost of a hearing aid. The period for the first purchase of a hearing aid is sufficiently long to give the purchaser a lower fee paid to the hearing aid dispensing physician, and it is sufficiently short to allow the dispensing physician to prevent the unnecessary purchase of a hearing aid.

The argument of people who feel that they should not be forced to undergo a medical evaluation is discussed below in the section dealing with the waiver of the medical evaluation requirement.

For these reasons, the Commissioner has determined that medical evaluation should generally be required before the purchase of a hearing aid.

Twenty-seven comments suggested that medical evaluation should only be required for the first purchase of a hearing aid, because once the medical evaluation has been performed, no conditions could arise that would make medical evaluation necessary in the future. The Commissioner rejects these comments. The period between purchases could be 3 years or more. Many conditions causing further hearing loss could arise during such a period, and such conditions would warrant medical evaluation.

39. Forty-eight comments addressed the requirement that the medical evaluation occur 6 months before the purchase of the hearing aid. Twenty-one of these comments stated that the period should be less than 6 months. Most of these comments suggested a period of 3 months or less. The comments were generally based on the argument that too many changes could occur in a 6-month period and that these changes would negate a previous medical clearance. Seventeen comments said that 6 months was an appropriate period. Seventeen comments said that the period should be more than 6 months. Most of these comments suggested a period of 12 to 24 months. These comments generally argued that many people were slow to purchase a hearing aid and that the medical evaluation, once made, would be sufficient for future purchases.

The Commissioner has determined that medical evaluation should be made no more than 6 months before the purchase of the hearing aid. This period is sufficiently long to give the consumer time to shop around for a proper hearing aid, and it is sufficiently short to decrease the likelihood of substantial changes in the prospective user's medical condition.

37. Eight comments said that the parent or guardian of a prospective hearing aid user under the age of 18 should be permitted to waive the medical evaluation requirement for the child because parents should be free to determine what is in the best interest of their children.

Seventeen opposing comments specifically said that under no circumstances should a prospective hearing aid user under the age of 18 or the parent or guardian of such a person be permitted to obtain a hearing aid without a medical evaluation. The argument is that proper hearing is vital to the educational and social development of people in that age group.

The Commissioner has determined that for those under the age of 18, there is a special concern that medical conditions that led to hearing impairment be identified, diagnosed, and treated by a physician. In addition to the risk to a child's health because of undiagnosed and untreated conditions, there is concern that a child's untreated, or inadequately treated, hearing impairment may interfere with the development of speech and language, learning, and normal adaptation to society. Accordingly, the final regulation does not allow a waiver of the medical evaluation requirement for anyone under the age of 18.

28. Twenty comments suggested that a physician may be unwilling to sign the required statement saying that he has found "no medical reasons why the individual should not be fitted with a hearing aid."

The Commissioner agrees that many physicians may be unwilling to sign such a statement. Such a statement is not necessary for the purposes of this regulation. The wording is therefore changed to reflect that the patient has been examined and that the physician has determined that the patient is a candidate for a hearing aid. This language was suggested in the comments of the American Council of Otologists.

29. Thirty comments specifically stated that a waiver of the medical evaluation requirement should be allowed. Sixty-two comments generally stated that such a waiver should not be allowed.

Comments supporting the waiver generally said that such a provision was necessary to protect the freedom of those who had religious beliefs that forbade them from being treated by a physician. They also pointed out that a physician is trained to make such a diagnosis and that, if a hearing aid is purchased and a medically correctable condition goes undiagnosed and untreated, it could cause serious health problems for the hearing aid user.

These opposing the general medical evaluation requirement generally stated that consumers should not be forced to see a physician if they do not want to, that the requirement would add an unnecessary cost to the already high cost of hearing aids, and that patients are not generally aware of the capabilities of hearing aids, even when such use is appropriate.
ple in rural areas would be heavily burdened by the medical evaluation requirement, if a waiver were not allowed. Those who opposed the waiver, on the other hand, generally argued that medical evaluation is an absolute necessity because the problems could arise if a medical evaluation is waived and a correctable condition causing the hearing loss goes untreated.

Altogether, the Commissioner strongly recommends that all prospective hearing aid users obtain a medical evaluation of a hearing loss before purchasing a hearing aid, he recognizes that a waiver should be allowed for those who have religious or personal beliefs against a medical evaluation and for the rare circumstance where an individual would have great difficulty in obtaining a medical evaluation due to the lack of a physician in the area. Accordingly, the final regulation permits a prospective hearing aid user over the age of 18 to waive the medical evaluation requirements.

Specifically, section 52(a)(3) of the act provides that State and local governments may impose more stringent conditions for sale than are imposed by the FDA regulation. The comments pointed out that section 52(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 351), which was added by the Medical Device Amendments of 1976, provides that State and local laws that are inconsistent with or in addition to the regulation are preempted.

Therefore, because State and local governments will be required to petition for exemptions from section 52(a) of the act for differing requirements concerning hearing aid labeling or conditions on the sale of hearing aids, the Commissioner has determined that the statement in the proposed regulation is inappropriate, and it is deleted from the final regulation. A proposed regulation requiring that the state or local requirements must be those which State and local governments may petition for exemption from section 52(a) of the act will be published in the Federal Register in the near future.

The Commissioner has also determined that the preemption of section 52(a) of the act does not apply to rules or requirements established by Federal, State, or local laws that are inconsistent with or in addition to the regulation are pre-empted.

Section 52(b) of the act applies to specific State and local requirements with respect to the safety and effectiveness of a device or to any other requirement applicable to the device under the act, if such requirement is different from, or in addition to, requirements which are applicable to the specific device under the act. Section 52(b) provides that the Commissioner may use his authority to exempt a State or local government from the requirement of section 52(b) if the State or local requirements for the device are more stringent than requirements for the device imposed by FDA under the act, or if the requirement is necessitated by compelling local conditions and compliance with the State or local requirement would not cause the device to be in violation of a requirement under the act.

Section 52 of the act applies to specific State and local requirements with respect to the sale of hearing aids. The Commissioner, however, recognizes that State and local laws with respect to the licensing of hearing aid dispensers, audiologists, or physicians. In the Commissioner's view, such laws do not change the Commissioner's opinion that section 52(b) of the act is necessary and is an unwarranted interference in the hearing aid dispenser's business.

The Commissioner believes that this requirement is necessary to assure that the best services are provided to the prospective users and that the hearing aid dispenser is able to meet the requirements of paragraph (b) of section 52(b) of the act.

30. Four comments objected to the requirement that the dispensing order form be retained for 3 years by the dispensing physician and that the no­
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3801. Records and Reports on Devices, specifically authorizes FDA, within certain limits, to prescribe regulations to require device manufacturers to submit device labeling to FDA.

Accordingly, based on the authority provided to FDA by sections 519 and 704 of the act, the Commissioner has decided to require manufacturers of hearing aids, that were in commercial distribution at the effective date of the regulation—August 15, 1977—to submit to FDA copies of the User Instructional Brochure and all other labeling for hearing aids. The Commissioner has also decided that this requirement should be included in the body of the final hearing aid labeling regulation, rather than as a proposal, to satisfy the requirements of section 519 of the act that a “regulation” be issued to require such submissions.

The Commissioner has determined that the submission of such labeling is necessary to ensure conformance with the requirements of $ 801.420 and to determine whether such devices are adulterated or misbranded, or otherwise in violation of the act since such labeling is generally prepared either in the normal course of business.

The Commissioner also notes that the labeling for devices newly marketed subsequent to August 15, 1977 will be reviewed by FDA in accordance with the procedures of section 510(k) of the act (21 U.S.C. 360(k)) (premarket review); section 513(f) (2) of the act (21 U.S.C. 360e(f)(2)) (classification); and section 518 of the act (21 U.S.C. 360e) (premarket approval) of the act, as applicable.

Two comments on this portion of the proposal suggested that it would be difficult to comply with the labeling submissions within the 120-day period allowed by the preamble to the proposed regulation. Accordingly, to allow more time to comply, $ 801.420(d) requires that the manufacturer of a hearing aid, if he intends to submit to FDA a User Instructional Brochure and all other labels and labeling for the hearing aid on or before the effective date of the regulation—August 15, 1977—must make those hearing aids in commercial distribution at that time.

Background data and information on which the Commissioner relies in promulgating this regulation have been placed on file for public review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5000 Fishers Lane, Rockville, MD 20857. The following is a list of these documents:

17. Memorandum on the HEW Infradepartmental Task Force on Hearing Aids, including minutes of Infradepartmental Task Force Meetings and agency comments on the Task Force reports.

Therefore, under the Federal Food, Drug, and Cosmetic Act (see 21 U.S.C. 321(h), (k), (m), (n), 352, 360i, 360j(e), 371(a), 374)) and under authority delegated to the Commissioner (21 CFR 6.1) (reclassification published in the Federal Register, Vol. 41, No. 41 (April 12, 1976)), Part 801 is amended as Subpart H by adding new §§ 801.420 and 801.421, to read as follows:

§ 801.420 Hearing aid devices, professional and patient labeling.

(a) Definitions for the purposes of this section and § 801.421—'Hearing aid' means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(b) "Dispenser" means any person, partnership, corporation, or association engaged in the sale, lease, or rental of hearing aids to any member of the consuming public or any employee, agent, or representative of such a person, partnership, corporation, or association.

(c) "Hearing aid" means any device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(d) "Hearing aid health professional" means any licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss.

§ 801.421 Hearing aid labeling.

(a) General. All labeling information required by this paragraph shall be contained in a User Instructional Brochure that shall be developed by the manufacturer or distributor, shall ac-
company the hearing aid, and shall be provided to the prospective user by the dispenser of the hearing aid in accordance with § 801.421(c). The User Instructional Brochure accompanying each hearing aid shall contain the following information and instructions for use, to the extent applicable to the particular requirements and characteristics of the hearing aid:

(i) An illustration(s) of the hearing aid, indicating operating controls, user accessible battery compartment.

(ii) Information on the function of all controls intended for user adjustment.

(iii) A description of any accessory that may accompany the hearing aid, e.g., accessories for use with a television or telephone.

(iv) Specific instructions for:

(a) Use of the hearing aid.

(b) Maintenance and care of the hearing aid, including the procedure to follow in washing the earmold, when replacing tubing on those hearing aids that use tubing, and in storing the hearing aid.

(c) Replacing or recharging the batteries, including a generic designation of replacement batteries.

(d) Information on how and where to obtain repair service, including at least one specific address where the user can go, or send the hearing aid to, to obtain such repair service.

(e) A description of commonly occurring avoidable conditions that could adversely affect or damage the hearing aid, such as dropping, immersing, or exposing the hearing aid to excessive heat.

(f) Identification of any known side effects associated with the use of a hearing aid that may warrant consultation with a physician, e.g., skin irritation and accelerated accumulation of cerumen (ear wax).

(g) A statement that a hearing aid will not restore normal hearing and will not prevent or improve a hearing impairment resulting from organic conditions.

(h) A statement that in most cases infrequent use of a hearing aid does not permit a user to attain full benefit from it.

(i) A statement that the use of a hearing aid is only part of hearing habilitation and may need to be supplemented by auditory training and instruction in lipreading.

(j) The warning statement required by paragraph (c) (2) of this section.

(k) The notice for prospective hearing aid users required by paragraph (c) (3) of this section.

(l) The technical data required by paragraph (c) (4) of this section, unless such data is provided in separate labeling accompanying the hearing aid device.

(2) Warning Statement. The User Instructional Brochure shall contain the following warning statement:

Warning to Hearing Aid Dispenser

A hearing aid dispenser should advise a prospective hearing aid user to consult promptly with a licensed physician (preferably an ear specialist) before dispensing and fitting a hearing aid, when the dispenser determines through inquiry, actual observation, or review of any other available information concerning the prospective user, that the prospective user has any of the following conditions:

(i) Visible congenital or traumatic deformities of the ear.

(ii) History of active drainage from the ear within the previous 90 days.

(iii) History of sudden or recent onset with the previous 90 days.

(iv) Acute or chronic dizziness.

(v) The history of sudden or recent onset of a condition that may accompany the hearing aid, indicating operating controls, user accessible battery compartment.

(vi) Viable evidence of significant cerumen accumulation or a foreign body in the ear canal.

(vii) Pain or discomfort in the ear.

(viii) Special care should be exercised in selecting and fitting a hearing aid whose maximum sound pressure level exceeds 132 decibels because there may be risk of impairing the remaining hearing of the hearing aid user.

(ix) The warning statement of the hearing aid user is required only if these hearing aids with a maximum sound pressure capability greater than 132 decibels (dB).

(x) Attack and release times (telephone cordless only).

(xi) Input−output curve (ACG aids only).

(xii) The notice for prospective hearing aid users.

The User Instructional Brochure shall contain the following notice:

Important Notice for Prospective Hearing Aid Users

Good health practice requires that a person with a hearing loss have a medical evaluation by a physician who specializes in diseases of the ear before purchasing a hearing aid. Liased physicians who treat conditions of the ear are often referred to as otolaryngologists, otorhinolaryngologists.

The importance of medical evaluation is to assure that all medically treatable conditions that may affect hearing are identified and treated before the hearing aid is purchased. For example, the physician will give you a written statement that states that your hearing loss has been medically evaluated and that you may be considered a candidate for a hearing aid.

The physician will refer you to an audiologist or hearing aid dispenser, as appropriate, for a hearing aid evaluation.

The audiologist or hearing aid dispenser will conduct a hearing aid evaluation to ascertain whether you are a hearing aid user and without hearing aid. The hearing aid evaluation will enable the audiologist or dispenser to select and fit a hearing aid to your individual needs.

If you have reservations about your ability to adapt to amplification, you should inquire about the availability of a trial−rental or purchase−option program. Many hearing aid dispensers now offer programs that permit you to wear a hearing aid for a period of time for a nominal fee after which you may decide if you want to purchase the hearing aid.

Federal law restricts the sale of hearing aids to those individuals who have obtained a medical evaluation from a licensed physician, or by regulations of the Federal Trade Commission.

(ii) Induction coil sensitivity (telephone aids only).

(iii) Frequency range.

(iv) Average full−on gain (HF−Average full−on gain).

(v) Reference test gains.

(vi) Total harmonic distortion.

(vii) Equivalent input noise.

(viii) Battery current drain.

(v) The test procedure described in paragraph (c) of this section and all other labeling for each type of hearing aid described in paragraph (c) of this section shall submit to the Food and Drug Administration, Bureau of Medical Devices and Diagnostic Products, Division of Compliance, HFS−116, 8757 Georgia Ave., Silver Spring, MD 20910, a copy of the User Instructional Brochure described in paragraph (c) of this section and all other labeling for each type of hearing aid on or before August 15, 1977.

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(4) Technical data. Technical data used to select and fit a hearing aid, including the performance characteristics of the hearing aid before it is released for clinical evaluation and rehabilitation since hearing loss may cause problems in language development and the educational and social growth of a child. An audiologist is qualified by training and experience to assist in the evaluation and rehabilitation of a child with a hearing loss.
§ 801.421 Hearing aid devices; conditions for sale.

(a) Medical evaluation requirements—

(1) General. Except as provided in paragraph (a)(2) of this section, a hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding 6 months.

(2) Waiver to the medical evaluation requirements. If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of paragraph (a)(1) of this section provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by

(Hearing aid dispenser’s name)

that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

(b) Opportunity to review User Instructional Brochure. Before signing any statement under paragraph (a)(2)(iii) of this section and before the sale of a hearing aid to a prospective user, the hearing aid dispenser shall:

(1) Provide the prospective user a copy of the User Instructional Brochure for a hearing aid that has been, or may be selected for the prospective user;

(2) Review the content of the User Instructional Brochure with the prospective user orally, or in the predominate method of communication used during the sale;

(3) Afford the prospective user an opportunity to read the User Instructional Brochure.

(c) Availability of User Instructional Brochure. (1) Upon request by an individual who is considering purchase of a hearing aid, a dispenser shall, with respect to any hearing aid that he dispenses, provide a copy of the User Instructional Brochure for the hearing aid or the name and address of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained.

(2) In addition to assuring that a User Instructional Brochure accompanies each hearing aid, a manufacturer or distributor shall with respect to any hearing aid that he manufactures or distributes:

(i) Provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users;

(ii) Provide a copy of the User Instructional Brochure to any hearing aid professional, user, or prospective user who requests a copy in writing.

(d) Recordkeeping. The dispenser shall retain for 3 years after the dispensing of a hearing aid a copy of any written statement from a physician required under paragraph (a)(1) of this section or any written statement waiving medical evaluation required under paragraph (a)(2)(ii) of this section.

(e) Exception for group auditory trainers. Group auditory trainers, defined as a group amplification system purchased by a qualified school or institution for the purpose of communicating with and educating individuals with hearing impairments, are exempt from the requirements of this section.

Effective date. This regulation shall become effective August 15, 1977.

(Secs. 201(h), (k), (m), (n), 502, 519, 520(e), 701(a), 704, 52 Stat. 1040-1041 as amended, 1050-1051 as amended, 1055, 67 Stat. 477 as amended, 90 Stat. 564-565, 567 (21 U.S.C. 321(h), (k), (m), (n), 352, 360j(e), 371(a), 374).)


SHERWIN GARdNER, Acting Commissioner of Food and Drugs.

Note.—Incorporation by reference approved by the Director of the Office of the Federal Register on January 13, 1977, and it is on file in the Federal Register library.
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

TRAWL FISHERIES AND HERRING GILLNET FISHERIES OF THE EASTERN BERING SEA AND NORTHEAST PACIFIC

Preliminary Fishery Management Plan

On the 4th of February, 1977, the Secretary of Commerce, through an appropriate delegation of authority to the Associate Administrator for Marine Resources of the National Oceanic and Atmospheric Administration and the Director of the National Marine Fisheries Service, published a Notice of Determination, Preparation, Issuance, and Implementation of Preliminary Fishery Management Plans at 42 FR 6873. In order that each Plan may have the widest possible circulation, the Secretary has decided that each should be published in the Federal Register.

Dated the 4th day of February, 1977 at Washington, D.C.

WINIFRED H. MEBORN,
Associate Director, National Marine Fisheries Service.

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1.0 INTRODUCTION

Resumption by Japan in 1954 of the limited trawling it had carried out prior to World War II marked the birth of the contemporary international fishery for Pacific halibut, sablefish, and other bottomfishes of the Bering Sea-Aleutian Island region. Prior fishing was on a small scale—by Alaska natives for subsistence, by U.S. commercial fishermen for Pacific cod, and by U.S. and Canadian commercial fishermen for Pacific halibut. Since 1954 the fishery has expanded greatly in size of harvests and area of operations until it now ranks among the major fisheries in the world. The fishery has impacted both directly and indirectly on U.S. fisheries. This preliminary management plan is in direct response to the legislative requirements mandated by Pub. L. 94-226.

2.0 DESCRIPTION OF THE FISHERY

A. AREA STOCKS INVOLVED

The Bering Sea is characterized by an extensive area of continental shelf (approximately 1,000,000 km²) and other features which favor the development of large bottomfish resources. Comprehensive resource surveys by the Soviet Union (Moiseev, 1964), the history of commercial fishery development in the Bering Sea, and resource surveys by the National Marine Fisheries Service have shown the Bering Sea to be among the most productive fishing areas in the world. Over 300 fish species are known to occur in the Bering Sea (Wllimovsky, 1974), of which less than 15 species (excluding salmon, shrimp, and crab) have been the target of the combined fisheries of Japan, the Republic of Korea, the Soviet Union, and the United States. In terms of commercial production, however, the annual total catch by all nations from the eastern Bering Sea approached 330,000 metric tons, but the Bering Sea was on a small scale—by Alaska natives for subsistence, by U.S. commercial fishermen for Pacific cod, and by U.S. and Canadian commercial fishermen for Pacific halibut. Since 1954 the fishery has expanded greatly in size, and area of operations until it now ranks among the major fisheries in the world. The fishery has impacted both directly and indirectly on U.S. fisheries. This preliminary management plan is in direct response to the legislative requirements mandated by Pub. L. 94-226.

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of the Bering Sea. The onset of spring brings warmer temperatures, a northward recession of ice, and the movement of many species out of the deep and onto the shelf to commence feeding migrations. The surface waters of the southeastern Bering Sea are cooled by dense water originating in the Alaska Gyre. The coastal waters of the southeastern Bering Sea are cold and productive. The seasonal persistence of these conditions is determined by the persistence of the ice cover, which can vary from year to year and even season to season. Known movements of Pacific halibut and sablefish populations by emigration and immigration is a slow process. An aspect of these movements is the emigration of Pacific halibut and sablefish populations by emigration and immigration. The significance of these movements cannot yet be quantified for cod declined in subsequent years until 1952. Doolan et al. (1986) have estimated that, during the period 1933-1974, during which the Bering Seacod was virtually absent from the Bering Sea shelf, the total harvest of cod was estimated to have amounted to less than 130,600 mt and was mostly comprised of flatfishes and walleye pollock. Japan resumed its fishing operations in the eastern Bering Sea in 1954 and by 1961 the catch of bottomfish and herring had grown to over 800,000 mt. Catches declined to around 300,000 tons in 1963 but thereafter increased to over 1 million tons by 1971. The decline in catches between 1961 and 1963 was caused by overfishing of yellowfin sole and the cod harvest was increased by the combined efforts of Japan and the U.S.S.R.: the great increase in harvest after 1963 resulted from a shift to walleye pollock as Japan's primary target species. Catches of bottomfish and herring from the Bering Sea averaged 1.7 million mt annually during the period 1970-1974 and over 80 percent was comprised of walleye pollock. The U.S.S.R. was the next nation to send its vessels to fishing grounds in the eastern Bering Sea. In 1959, the U.S.S.R. initiated winter fisheries for flatfishes and herring off Alaska in the southeastern Bering Sea (Chitwood, 1969). Both fisheries were at least in part in response to declinings catches of flatfishes and herring and declining catches of Pacific halibut and Pacific cod in 1952. Pacific halibut are known to be an important component of the fishery for Pacific halibut and herring and for Pacific halibut and Pacific cod, and the importance of these species for the Bering Sea is well known. The earliest reported fishing by Japanese vessels off Alaska resulted from an order issued by the Secretary of Commerce in April 1913 and terminated in July 1921, when the law forbidding the landing of catches by foreign vessels in U.S. ports. The suspension was followed by trawling in 1940-1941 for sablefish in order to compensate for reduced food supplies caused by World War II. The time the suspension was in effect, Japanese vessels landed 44.4 million dry-weighted cod and 178,000 pounds of stockfish at San Francisco and Puget Sound ports (Cobb, 1927). Although most of this cod was from around the Kurile Islands and in a few instances the Japanese vessels caught their fish off Alaska. Information is not available on whether the cod caught by Japanese vessels off Alaska were from the eastern Bering Sea, from Aleutian Islands or from the Gulf of Alaska. The next effort by Japan off Alaska was a trawl fishery. Japanese exploratory trawlers carried out limited surveys of bottomfish resources in the Bering Sea as early as 1920-1931, and the first commercial operation was in 1932-1937 (Bourgois, 1951). This initial trawling venture was by the United States and was carried out by six vessels under the direction of the Secretary of Commerce. By 1935 the U.S. government issued an order to prevent further participation in the fishery. The first catch of pollock reported by the U.S.S.R. from the eastern Bering Sea was in 1959 when 27,000 mt were harvested. The Soviet fishery for pollock thereafter assumed importance and exceeded 300,000 mt in 1974. Annual catches of bottomfish and herring from the Bering Sea by Soviet vessels averaged 64.4 million mt during the period 1970-1974. In 1967 a trawler from South Korea commenced operations in the eastern Bering Sea. This scouting effort was followed in subsequent years by trawling for walleye pollock and other species of bottomfish and longlining for sablefish. South Korea has not provided statistics on its catches, it has been necessary to estimate its harvests from observations by NMFS Law Enforcement personnel. According to these estimates, vessels of South Korea caught an annual average of 12,000 mt of bottomfish in the eastern Bering Sea during the period 1970-1974. Participation has been minimal by other nations in the Bering Sea fisheries for bottomfish and herring and longlining for sablefish. Catches of bottomfish and herring are shown in Table 1 for the period 1933-1974. During this period, fishing by the United States was confined to comparatively small longline efforts for Pacific halibut and Pacific cod, and the addition to a subsistence fishery by Alaskan natives for herring. From the standpoint of size of harvests, the fishery has been dominated by Japan, whose cumulative catches of bottomfish and herring during the period 1933-1974 amounted to 14.9 million mt, or 77.8 percent of the all-nation harvest. The U.S.S.R. accounted for 1.2 million mt or 21.7 percent of the cumulative total.
C. THE CONTEMPORARY FISHERY

1. United States and Canada.—The contemporary United States fishery for bottomfish differs from those of other nations not only from the standpoint of the much smaller harvests taken, but also in the basic character of the fishing operation itself. The United States (and Canadian) fishery is directed entirely toward Pacific halibut and is prosecuted by small longline vessels. These longliners deliver their catches (Table 1) to ports in Alaska, Washington, and Canada when they are processed ashore. In contrast, other nations carry out distant-water operations in which fleets of large catcher vessels seek a variety of species and the catches are either processed at sea aboard the catcher vessels themselves or are transferred to factoryships, also called motherships, for processing. The foreign, distant-water fleets typically include a variety of support vessels besides factoryships, including refrigeration transports, oil tankers, personnel transports, hospital ships, tugs, patrol vessels, and research vessels. The flotillas of Japanese and Soviet vessels are self-supporting and usually obtain all their supplies and services from the homeland, except sometimes to obtain emergency medical aid in the United States for seriously injured or sick crewmen.

Table 1.—Catches of bottomfish and herring in thousands of metric tons by all nations from the Bering Sea and Aleutian Island regions in calendar years 1988-74. Catches shown for the United States are Pacific halibut. Not included for the United States are catches of herring by Alaska Natives for subsistence purposes and line catches of Pacific cod curing the period 1882-1955 which were mostly delivered to Washington and California ports.

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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Mothership Fishery is licensed by Japan to fish only in the Bering Sea. It consists of several factorieships, each of which is accompanied by a fleet of catcher vessels. Catcher vessels servicing the motherships are Danish seiners, pair trawlers, or other trawlers, with other trawlers coming into increasing use in recent years. Otter trawlers tow a bag-shaped net whose mouth is held open vertically by floats on the head rope and

weights on the foot rope and horizontally by so-called otter boards attached to or ahead of the wings of the net. Pair trawlers are simply two otter trawl vessels paired up to tow the same net. Danish seiners differ from otter trawls mainly in the way they are set and hauled. Otter trawls are typically set directly off the stern and fished by the towing action of the vessel as it moves straight ahead. Danish seiners are set on a triangular course, starting from and returning to an anchored buoy, and retrieved by winching the net in as the vessel slowly moves ahead (Alverson, et al., 1964).

Each mothership fleet consists of a factoryship in some of which are over 20,000 gross tons, which may be tended by up to about 30 catcher vessels. The mothership operations have changed from a short "fill-in" operation between salmon driftnet fishing in the spring and Antarctic whaling in the winter during the early period of the fishery to a year-around operation now. Over the years there has been some reduction in the numbers of catcher vessels assigned to each mothership but a great increase was achieved in the fishing power of individual catcher vessels as they became progressively larger and equipped with more powerful engines.

The North Pacific Trawl Fishery is carried out by trawlers operating independent of motherships and either offloading their catches to refrigerated transports or delivering the catches to Japan themselves. Since 1967, Japan has limited by license the number of vessels in this fishery to 42 at any one time; they may fish in all waters between 20° W and 160° E, which includes the Bering Sea, Aleutian Islands, and waters south and east off the Pacific Coast of the United States and Canada. Although some smaller vessels had participated in this fishery in former years, fishing is now entirely by factory stern trawlers. A typical Japanese factory trawler now participating in the Bering Sea fishery is over 1,000 gross registered tons and some exceed 5,000 gross tons with crews of 130 people or more.

As in the Mothership Fishery, there has been a major upgrading of the fleet over the years. This upgrading has been in terms of size of vessel; power of propulsion engines; and efficiency of fishing gear, navigation equipment, and finding devices. For example, between 1967 and 1975 the average size of the factory trawlers employed in the North Pacific Trawl Fishery increased from about 1,500 gross tons to over 2,500 tons. The power of this upgrading has been marked increase in the fishing power of the fleet which is not apparent when one considers just the numbers of vessels employed.

The landbased Dragnet Fishery ("hokuten") is similar to the North Pacific Trawl Fishery in that the catcher vessels operate independent of motherships. Vessels licensed by Japan for the landbased Dragnet Fishery are restricted to operating in waters north of 48° N latitude, east of 153° E longitude, and west of 170° W longitude.

### Table: Japan and Catcher Vessels

<table>
<thead>
<tr>
<th>Year</th>
<th>Fishery</th>
<th>United States</th>
<th>Canada</th>
<th>Japan</th>
<th>U.S.S.R.</th>
<th>South Korea</th>
<th>Poland</th>
<th>Taiwan</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967</td>
<td>Bottomfish</td>
<td>Tr.</td>
<td>0</td>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Herring</td>
<td>(7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>Tr.</td>
<td>0</td>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
</tr>
<tr>
<td>1969</td>
<td>Bottomfish</td>
<td>Tr.</td>
<td>0</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Herring</td>
<td>(7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>107</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>Tr.</td>
<td>0</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>1971</td>
<td>Bottomfish</td>
<td>Tr.</td>
<td>0</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Herring</td>
<td>(7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>107</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>Tr.</td>
<td>0</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>1973</td>
<td>Bottomfish</td>
<td>Tr.</td>
<td>0</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>Herring</td>
<td>(7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>107</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>Tr.</td>
<td>0</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>48</td>
</tr>
</tbody>
</table>

(2) Japan.—In keeping with the vast size of its operations, Japan employs more kinds of vessels and fishing gear than do the other nations which participate in the Bering Sea fisheries. There are four kinds of operations: a Mother ship, North Pacific Trawl Fishery, Landbased Dragnet Fishery, and North Pacific Longline-Gillnet Fishery. Bottomfish are the primary target for all four fisheries.
by this fishery is from waters off Asia around Kamchatka and the northern Kuriles under terms of a bilateral agreement between the United States and Japan, the catch in 1975 and 1976 by the Landbased Dragnet Fishery off Alaska is limited to 35,600 mt (all species) in the eastern Bering Sea and 8,500 tons (all species) from the Aleutian Island area. Landbased dragnet vessels in current use are mostly stern trawlers, and limited to the Japanese Government to a maximum size of 340 gross registered tons.

Between 1961 and 1968 the fishing power of the Landbased Dragnet Fishery increased much more than the 50-fold increase in the number of vessels would indicate. In the earlier years most of the vessels were less than 110 gross tons and employed Danish seines. In contrast, almost all of the vessels are now of the 350 gross ton maximum size limit of the 350 gross ton maximum size limit.

### Table 2—Number of vessels in Japanese fisheries and their catches from the Bering Sea and Aleutian Island region in thousands of metric tons. Years 1952-1960 are calendar years; years 1971-76 are from Nov. 1 of preceding year to Oct. 31 of indicated year.

<table>
<thead>
<tr>
<th>Year</th>
<th>North Pacific Trawl</th>
<th>North Pacific Longline-Gillnet</th>
<th>Land-based dragnet</th>
<th>Bottom fish catch</th>
<th>Herring catch</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>221</td>
<td>0</td>
<td>0</td>
<td>3,152</td>
<td>201</td>
</tr>
<tr>
<td>1953</td>
<td>228</td>
<td>4</td>
<td>0</td>
<td>3,293</td>
<td>58</td>
</tr>
<tr>
<td>1954</td>
<td>225</td>
<td>7</td>
<td>0</td>
<td>3,270</td>
<td>65</td>
</tr>
<tr>
<td>1955</td>
<td>219</td>
<td>10</td>
<td>0</td>
<td>3,167</td>
<td>43</td>
</tr>
<tr>
<td>1956</td>
<td>220</td>
<td>10</td>
<td>0</td>
<td>3,187</td>
<td>59</td>
</tr>
<tr>
<td>1957</td>
<td>217</td>
<td>9</td>
<td>0</td>
<td>3,127</td>
<td>62</td>
</tr>
<tr>
<td>1958</td>
<td>216</td>
<td>7</td>
<td>0</td>
<td>3,066</td>
<td>53</td>
</tr>
<tr>
<td>1959</td>
<td>216</td>
<td>9</td>
<td>0</td>
<td>3,083</td>
<td>57</td>
</tr>
<tr>
<td>1960</td>
<td>211</td>
<td>7</td>
<td>0</td>
<td>3,010</td>
<td>45</td>
</tr>
</tbody>
</table>

### Notices

Although bottomfish are the main target of all four kinds of Japanese fishing operations in the Bering Sea, some Pacific herring also are taken by each of the fisheries. Largest catches of herring are by the Mothership Fishery and North Pacific Longline-Gillnet. The average size of herring caught by gillnets is greater than the comparatively small catches of herring for Pacific halibut there under terms of the North Pacific Convention. As Japan's catches of herring in the Bering Sea declined, the longliners increasingly switched to sablefish as the target species, first within the Bering Sea and later to the Gulf of Alaska.

Development of the different kinds of Japan's fishing operations in the Bering Sea can be traced in Table 2. It was not until the late 1960's that other than mothership operations became significant, but the Mothership Fishery is still the dominant operation.

The North Pacific Trawl Fishery began in earnest in 1969 and catches increased dramatically from about 100,000 mt in that year to almost one-half million tons in 1975. The North Pacific Longline-Gillnet fleet largely has been in the northeastern Pacific Ocean (mainly Gulf of Alaska), as reflected by the small catches shown in Table 2 for the Bering Sea.

During the entire period 1953-1974, Japanese vessels harvested a total of 14.9 million mt of bottomfish and herring from the Bering Sea and Aleutian Island regions. Over 97 percent of the total was from the Bering Sea with less than 3 percent coming from the Aleutian Island region. By kind of fishing operation, the Mothership Fishery accounted for 77.1 percent of Japan's total catch of bottomfish and herring during the period 1953-1975, North Pacific Trawl Fishery 19.0 percent, Landbased Dragnet Fishery 3.7 percent, and North Pacific Longline-Gillnet Fishery only 0.2 percent.
by the Soviets in the Bering Sea include Pacific ocean perch, sablefish, Pacific cod, and grenadiers. The fishery for grenadiers is a comparatively recent development in deeper waters than the other species of bottomfish already utilized by the Soviet fleet. As for pollock, the catches of bottomfish by the U.S.S.R. from the Aleutian Island area have been much smaller than from the Bering Sea. In terms of relative importance of the catch, the Aleutian area has contributed a larger fraction of the Soviet catch (11 percent of the combined Bering Sea-Aleutian Island total during 1959-1975) than the Bering Sea (2 percent of the total catch).

Whereas Japan uses trawls, Danish seine, longlines, and gillnets for harvesting bottomfish and herring, all of the Soviet catch is taken by trawls. Soviet trawlers are of three basic types: factory stern trawlers (Hitz, 1968). Three classes of side trawlers have been used. Smallest and oldest of the side trawlers is the SRTM class of around 700 gross tons and a crew of about 70. Largest of the refrigerated stern trawlers is the SRTM class of around 700 gross tons and a crew of about 30. In recent years a new class of stern trawler, apparently designed as an improvement on the SRTM, has been utilized. These vessels, known as SRTK's, are about 775 gross tons and reportedly have the same basic hull and machinery below decks as SRTM's but are designed for more efficient trawling over the stern. Factory stern trawlers are the largest and most common kind of catcher vessel employed by the U.S.S.R. The so-called BMRT has been the most common factory stern trawler and is of 3,175 gross tons and a crew of about 90. A new class of factory stern trawler, which has come into increasing use, is the SRTM, with a general size of 3,500 gross tons. The advantage of a larger deck area aft for handling gear and fish. Several new classes of catcher vessels have been developed by the Soviet fleet, increases from an average of 700,000 gross tons in 1963-1965 to a high of about 1,200,000 gross tons in 1972-1974. The figures in Table 3 are for all waters off Alaska but are indicative of the general situation which has occurred within the Bering Sea.

TABLE 3.—Number and equivalent gross registered tonnage of different Soviet catch vessels sighted off Alaska, 1965-71. Sightings were by NMFS personnel and do not include repeated sightings of the same vessels.

<table>
<thead>
<tr>
<th>Year</th>
<th>Side trawlers</th>
<th>Factory stern trawlers</th>
<th>Equivalent gross tons, all classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1963</td>
<td>133</td>
<td>165</td>
<td>298</td>
</tr>
<tr>
<td>1964</td>
<td>223</td>
<td>264</td>
<td>487</td>
</tr>
<tr>
<td>1965</td>
<td>320</td>
<td>364</td>
<td>784</td>
</tr>
<tr>
<td>1966</td>
<td>286</td>
<td>304</td>
<td>590</td>
</tr>
<tr>
<td>1967</td>
<td>190</td>
<td>256</td>
<td>446</td>
</tr>
<tr>
<td>1968</td>
<td>131</td>
<td>182</td>
<td>313</td>
</tr>
<tr>
<td>1969</td>
<td>112</td>
<td>170</td>
<td>282</td>
</tr>
<tr>
<td>1970</td>
<td>97</td>
<td>132</td>
<td>229</td>
</tr>
<tr>
<td>1971</td>
<td>73</td>
<td>112</td>
<td>185</td>
</tr>
<tr>
<td>1972</td>
<td>56</td>
<td>99</td>
<td>155</td>
</tr>
<tr>
<td>1973</td>
<td>44</td>
<td>77</td>
<td>121</td>
</tr>
</tbody>
</table>

(4) Other Nations.—The first commercial fishery by South Korea was in 1963, when a 587-ton factory ship accompanied by eight pair trawlers was deployed to the eastern Bering Sea. Two vessels, several of which have been deployed to the eastern Bering Sea. These vessels were for less than 1 week and occasionally to 100 tons of sablefish. The size of South Korea's fishing operations was increased in subsequent years and, by 1974, consisted of two factory ships accompanied by a fleet of 25 pair trawlers and eight longliners, whose catch was estimated to be 40,000 mt of bottomfish, mostly sablefish, and pollock, but including about 3,000 tons of sablefish and 200 tons of herring. Catches were smaller in 1975 because of declines in demand and prices for fish coupled with increased operating costs. However, South Korea has announced its intention to increase its harvest of sablefish from the eastern Bering Sea in 1976 more than 100,000 mt over the 1975 level. Because South Korea has yet to provide the United States with statistics on its fishing operations off the Bering Sea and Pacific coasts of the United States, it has been necessary to estimate catches by its fleet from observations made by personnel of the Law Enforcement Division, NMFS.

Fishing by other nations in the eastern Bering Sea has been limited to exploratory probes by Taiwan and Poland. One Taiwanese stern trawler made three trips between December 1974 and May 1975 with a catch target of 2,256 mt. Taiwan has not provided the United States with statistical data on its fishing operations. Taiwan has reported to the United States that one of its factory trawlers caught 393 tons of bottomfish in the eastern Bering Sea in 1973.

D. IMPACTS ON DOMESTIC FISHERY

The kinds of impacts on domestic fisheries have been much the same from the distant-water fleets of all nations. Impacts have included the interference with or destruction of longline and pot gear employed by United States halibut and crab fishermen, pre-emption of fishing grounds by the large foreign fleets, and the reduction in abundance of age-
cies of current or potential interest to U.S. fishermen.

The impact on stocks of fish of current interest to United States fishermen has been largely confined to halibut and crab. Purposeful and incidental catches of Pacific halibut by the foreign fisheries have contributed to a large decline in that resource, with serious commercial consequences for United States and Canadian setline fishermen. In the Bering Sea, the halibut catch by trawls generally is incidental, but the Japanese land-based dragnet fishery occasionally targets enoous sets. Unlike the U.S. total halibut catch by foreign trawl fleets in the Bering Sea increased throughout the 1960's and peaked at an estimated 11,519 mt in 1971. The trawl catch declined during 1972-1975 and fishery size and decline is expected in 1975-1976 as a result of trawl closures agreed to by Japan and the U.S.S.R. About 100 million snow (Tanner) crab (Callorhinus taitai) were observed annually in winter along the 100 meter isobath from Unimak Island along the shelf north, and west to about 161° N latitude in the eastern Bering Sea. The vast majority of the salmon (Oncorhyn-
chus tschawytscha), with only one or two chum salmon (O. keta) seen out of a total of perhaps 400 fish observed.

The foreign fisheries of the eastern Bering Sea and Aleutian Island area have impacted both indirectly and directly on the populations of marine mammals. A direct impact has been the increasing numbers of northern fur seals (Callorhinus ursinus) on the Pribilof Islands have been observed to have scraps of fish netting, plastic wrapping bands, and other debris around their necks or other parts of their bodies. Most of the material must have been lost or deliberately discarded by the large foreign fishing fleets. Deaths of some fur seals are known to have resulted from entangling in such materials, but the total impact cannot yet be evaluated. An indirect impact of the fishery would be in competing for some of the same species of fish and shellfish used as food by the northern fur seal and other marine mammals.

Among the many species of bottomfish present in the Bering Sea only Pacific halibut is sought by United States fishermen. There are many reasons for this anomalous situation, including: distance from United States markets and processing plants, but a contributing factor seems to be that foreign fishing has reduced stock densities of most of the desirable species to levels where they no longer are capable of yielding catch rates at which United States fishermen can afford to fish. The early foreign fisheries operated at high catch rates as a result of fishing on previously unutilized stocks. The effect of these high catch rates was to reduce the costs required to develop the foreign harvesting and processing technology for utilizing the resources. United States industry will not have the same advantage unless foreign fishing is reduced or stopped for a period of several years to allow the stocks to rebuild to higher levels of abundance.

Whereas the kinds of impacts on domestic fisheries have been much the same on both domestic and foreign fishes, the catches and fishing effort data in 1967 indicate how many would have been available for capture as adults in the United States crab fishery if they had not been killed by Japan's trawl fisheries.

Among the many species of bottomfish taken annually as a by-catch in Japan's fisheries of current or potential interest to United States fishermen has been the possibility of U.S. fishermen has been the possibility of U.S. fishermen having the same advantage unless foreign fishing is reduced or stopped for a period of several years to allow the stocks to rebuild to higher levels of abundance.

Whereas the kinds of impacts on domestic fisheries have been much the same on both domestic and foreign fishes, the catches and fishing effort data in 1967 indicate how many would have been available for capture as adults in the United States crab fishery if they had not been killed by Japan's trawl fisheries.

Greatest impact from the standpoint of size of operations has been by Japan, followed by the U.S.S.R.—with South Korea taking a distant third and all other nations causing far less impact. Although Japan and the U.S.S.R. have tended to target on the same general species, the greater use of midwater trawling by the U.S.S.R. (and the U.S.) has increased the catches of certain species, such as grenadiers, in deep water probably has resulted in a proportionately smaller Soviet by-catch of halibut and king crab (Paralithodes camtschatica), the species most coveted by United States fishermen. On the other hand, it appears from observations by NMFS Law Enforcement personnel that the Soviets frequently under-report their catches of bottomfish which means that the by-catch of halibut may be greater than inferred from official Soviet statistics.

The degree of compliance of Soviet vessels to agreements is very important for United States fishermen, in that the agreement for the United States is much more difficult to evaluate than for Japan. Japan has agreed not to retain trawl-caught halibut east of 175° W longitude except in International Pacific Halibut Commission (IPHC) Area D when they may be retained during a short period in the spring. United States and Canadian personnel are allowed on some Japanese vessels to monitor operations and, in effect, evaluate the compliance or non-compliance with the agreements. The U.S.S.R. has not agreed to refrain from fishing for Pacific halibut but says its vessels do not target on halibut or take many as a by-catch. Few United States or Canadian observers have been allowed on Soviet vessels to check these statements and, on the few occasions they have been permitted to board Soviet vessels in the Bering Sea, that the activities were research in character and therefore not representative of commercial operations.

Overfishing is the most difficult of all impacts to evaluate, particularly in regard to those nations which do not provide the United States with any statistics on their fishing operations or by catches providing statistics of limited usefulness. Although vessels from South Korea first began fishing in the Bering Sea in 1967, no statistics had been provided to the United States on their operations to the time of this writing (July 1976), nor has Taiwan provided any data on its catches. The U.S.S.R. began fishing in the Bering Sea in 1967, providing the United States with catch and effort data in 1967. Japan has furnished us with catch records from the inception in 1954 of its post-World War II fishery in the Bering Sea. Statistics provided to the United States by Japan have been among the most detailed and useful that are compiled by any nation in the world.

For lack of adequate statistics on catches and fishing effort from all nations participating in the Bering Sea fisheries for halibut and crab, it has been difficult, and for some species impossible, to adequately assess the effects of fishing. This situation has been aggravated by the pulse nature of the distant-water fisheries which have tended to generate massive fishing effort on previously unutilized stocks, species, or fishing grounds. Some improvement has occurred in recent years with the incorporation of safe- guards into the fisheries agreements with the U.S.S.R. and other nations, but additional improvements are needed to achieve a satisfactory state of compliance. The United States has not been able to implement the traditional method of quotas on the catches of some species, provisions not to target on other species, as well as certain time-area and gear restrictions.

E. REGULATORY HISTORY AND VIOLATIONS

(1) Fishery Restrictions.—(a) United States. Fishery restrictions on U.S. nationals are those established by the State of Alaska and those promulgated by the International Pacific Halibut Commission (IPHC) for the taking of Pacific halibut. The State of Alaska requires all crab fishermen to report such catches and provides for the suspension of fishing gear, after the State has been notified, on vessels that catch species of fish or shellfish in Alaska to possess a commercial fishing license and who fail to report such catches within 24 hours of landing. The Department of Fish and Game of the State of Washington has similar provisions for the taking of shellfish in the state. In the case of vessels engaged in the South Pacific tuna fisheries, the President may require all fishing vessels engaged in the fisheries to be furnished with a license or otherwise identified by the Department of State. The fishing gear employed by such vessels is subject to registration with the Department of State, and the President may by executive order establish such fishing areas as are necessary for the conservation of the tuna resource. Purchasers of fish from such vessels are required to keep records of each purchase and show the name of the seller, together with the name and date of the vessel, state of landing, and pounds.
purchased or each species, statistical area in which the fish were caught, and the kind of gear used in taking the fish. There are no other substantive regulations by the State of Alaska on the taking of bottomfish, other than Pacific halibut, in the Bering Sea and Aleutian Island area.

Restrictions by the IPHC on the taking of Pacific halibut pertain to licenses, gear, size limits, seasons, closed nursery grounds, and catch quotas. Licenses issued by the IPHC are required for all vessels fishing for halibut except those less than 5 net tons or vessels which use hook and line gear other than setlines. As regards both commercial and sport fishing, only hook and line gear is authorized by the IPHC for the taking of halibut.

(b) Foreign nations. The two kinds of fishery restrictions placed on foreign nations have been: (1) U.S. law establishing a 12-mile contiguous fishing zone (CFZ) within which all foreign fishing and activities in support of fishing are prohibited. This law was approved on October 14, 1966. Prior to then foreign fishing was prohibited within U.S. territorial waters which extend three miles from shore.

Enforcement of the CFZ and territorial waters is accepted by nations fishing off the U.S. as a U.S. right and responsibility. (2) Provisions contained in bilateral and other agreements signed by foreign nations with the U.S. These provisions usually have been agreed to through a negotiating process in which concessions have been made by foreign governments to U.S. fishery interests in exchange for concessions granted by the U.S. to the fishery interests of other nations. Concessions granted by the U.S. have been in the nature of permission to fish or carry out activities in support of fishing at certain times and places within the CFZ. Concessions granted by foreign nations have been in the form of agreement not to fish at certain times and places on the high seas outside the CFZ, not to target on certain species, and not to exceed certain levels of catch (catch quotas).

Enforcement of the provisions of bilateral and other agreements and the penalties imposed for violations is the responsibility of the individual nations. For example, the U.S.S.R. is responsible for enforcing and imposing penalties on its own nationals for violations of provisions relating to fishing activities on the high seas, outside the U.S. CFZ.

Several restrictions on foreign nations in the form of catch quotas and area-time closures have been in effect in the eastern Bering Sea and Aleutian Island region in recent years. Annual catch quotas, in metric tons, for Japanese and Soviet fisheries for 1974-1976 are as follows:

<table>
<thead>
<tr>
<th>Area and fishery</th>
<th>Species</th>
<th>1973</th>
<th>1974</th>
<th>1975-76</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern Bering Sea</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mother ship—North Pacific trawl</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pollock</td>
<td>1,000,000</td>
<td>1,300,000</td>
<td>1,100,000</td>
<td></td>
</tr>
<tr>
<td>Ground fish other than pollock</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Herring</td>
<td>3,000</td>
<td>4,600</td>
<td>4,600</td>
<td></td>
</tr>
<tr>
<td>Flatfish</td>
<td>8,500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ground fish (all species)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pacific Ocean perch</td>
<td>1,500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sablefish</td>
<td>1,200</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ground fish (all species)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flounder</td>
<td>1,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ground fish (all species)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S.S.R.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eastern Bering Sea</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pollock</td>
<td>210,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Herring</td>
<td>30,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other species</td>
<td>120,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rockfish</td>
<td>12,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other species</td>
<td>10,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 1 1969 level. |
| 2 1971 level. |
| 3 Excluded in other species. |

Area-time closures currently in effect for Japanese and Soviet trawl fisheries in the southeastern Bering Sea are shown in Figures 1 and 2. Other provisions relating to Japanese and Soviet fisheries are shown in Figures 3 and 4. Restrictions on fishing by Polish vessels in the eastern Bering Sea and Aleutian Island region are shown in Figure 5. Major provisions of the U.S. fisheries agreement with South Korea are shown in Figure 6. No official fisheries agreements have been signed with Taiwan.

(2) Violations and Gear Losses—Violations and gear losses off Alaska can be categorized as (1) violations of international agreements, (2) violations of U.S. waters and continental shelf resources, and (3) losses of crab pots and halibut skates to foreign fisheries. For convenience these violations and gear losses are summarized below according to nation. Not included in the following summaries are violations by foreign vessels fishing for crab, shrimp, or salmon, which will be discussed in the preliminary management plans for those fisheries.

A summary of violations of U.S. waters and continental shelf resources is provided in Table 4.
Figure 1.—Area-time closures and restrictions for Japanese trawl fisheries in southeastern Bering Sea, effective through December 31, 1976.
Figure 2.—Area-time closures and restrictions for Soviet trawl fisheries in southeastern Bering Sea, effective through December 31, 1976.
U.S.S.R.

JAPAN WILL NOT, ON HIGH SEAS; TRAWL DURING 7 DAYS SURROUNDING OPENING OF U.S. HALIBUT SEASON.

JAPAN ALLOWED IN CONTIGUOUS ZONE TO LOAD OFF ST. GEORGE ISLAND ALASKA NOVEMBER 1 THRU APRIL 30.

1. LONGLINE AND LOAD DECEMBER 1 THRU MAY 31, TRAWL MAY 16 THRU 31.
2. LONGLINE AND LOAD FEBRUARY 16 THRU SEPTEMBER 14, TRAWL MAY 16 THRU SEPTEMBER 14.
3. LONGLINE AND LOAD YEAR-ROUND.
4. LONGLINE AND LOAD APRIL 1 THRU OCTOBER.
5. LONGLINE AND LOAD YEAR-ROUND.

JAPAN ALLOWED IN CONTIGUOUS ZONE, NORTH PACIFIC TO:
1. LONGLINE AND LOAD YEAR-ROUND.
2. LONGLINE AND LOAD APRIL 1 THRU OCTOBER 31, TRAWL JULY 1 THRU OCTOBER 31.
3. LONGLINE AND LOAD APRIL 1 THRU OCTOBER 31.
4. LONGLINE, TRAWL AND LOAD YEAR-ROUND.
5. LONGLINE AND LOAD FEBRUARY 16 THRU SEPTEMBER 14.

JAPAN ALLOWED IN CONTIGUOUS ZONE TO LOAD OFF:
1. UNALASKA ISLAND JANUARY 1 THRU OCTOBER 14.
2. UMNAK ISLAND OCTOBER 15 THRU DECEMBER 31.

LONGLINE OR TRAWL BETWEEN 147W AND 157W FEBRUARY 16 THRU MAY 15.
LONGLINE OR TRAWL BETWEEN 147W AND 147W DECEMBER 1 THRU FEBRUARY 15.
LONGLINE SEPTEMBER 15 THRU FEBRUARY 15.
TRAWL AUGUST 10 THRU MAY 31.

TRAWL DURING 7 DAYS SURROUNDING OPENING OF U.S. HALIBUT SEASON.

Figure 3.—Area-time closures and restrictions for Japanese trawl and longline fisheries in the Gulf of Alaska, effective through December 31, 1976.
Figure 4.—Area-time closures and restrictions for Soviet trawl fisheries in the Gulf of Alaska, effective through December 31, 1976.
Figure 5.—Area-time closures and restrictions for fisheries of the Polish People's Republic in the Gulf of Alaska, effective through December 31, 1976.
Figure 6.—Provisions of the United States-Republic of Korea Fisheries Agreement effective through December 12, 1977.
TABLE 4.—Number of documented violations by foreign vessels of U.S. waters and continental shelf resources in the Bering Sea and Aleutian Islands, 1961-1976

<table>
<thead>
<tr>
<th>Nation</th>
<th>Number of violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.S.R.</td>
<td>3</td>
</tr>
<tr>
<td>Japan</td>
<td>15</td>
</tr>
<tr>
<td>South Korea</td>
<td>135</td>
</tr>
<tr>
<td>Taiwan</td>
<td>32</td>
</tr>
<tr>
<td>Canada</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
</tr>
</tbody>
</table>

As can be seen from the preceding table, Japan accounted for 11, or 74 percent, of the documented violations. Considering the large size of its fishing operations, only three violations by the U.S.S.R. is a surprisingly small number. The 11 violations by Japan consisted of 6 CFZ violations by longliners fishing for sablefish in Aleutian Island waters, 2 CFZ violations by longliners fishing for sablefish in Aleutian Island waters, and 1 violation by a trawler retaining king crab in violation of the continental shelf source provision. Two of the three violations by the U.S.S.R. were of the CFZ by trawlers fishing for groundfish in Aleutian Island waters; the other was a CFZ violation in Norton Sound in support of the Soviet herring fishery. The single violation by Canada was a longliner fishing in U.S. territorial waters.

A summary of the violations of international agreements is provided in Table 5.

TABLE 5.—Number of documented violations of international agreements by foreign vessels, Bering Sea and Aleutian Islands, 1961-1976

<table>
<thead>
<tr>
<th>Nation</th>
<th>Number of violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.S.R.</td>
<td>6</td>
</tr>
<tr>
<td>Japan</td>
<td>2</td>
</tr>
<tr>
<td>Canada</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
</tr>
</tbody>
</table>

The six violations by the U.S.S.R. were traveling in the Onmak pot sanctuary. The two violations by Japan were for possession of Pacific halibut by a longliner in an area closed to halibut fishing and for retention of halibut by a trawler. Both violations by Canadian vessels were for longlining for Pacific halibut in closed areas or seasons.

The numbers of U.S. crab pots reported as having been lost to foreign fishing vessels are summarized in Table 6 according to nation causing the losses.

TABLE 6.—Number of U.S. crab pots reported lost in Bering Sea and Aleutian Island to foreign vessels, 1963—1976

<table>
<thead>
<tr>
<th>Nation causing loss</th>
<th>Number of pots lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.S.R.</td>
<td>107</td>
</tr>
<tr>
<td>Japan</td>
<td>31</td>
</tr>
<tr>
<td>South Korea</td>
<td>38</td>
</tr>
<tr>
<td>Unknown</td>
<td>118</td>
</tr>
<tr>
<td>Total</td>
<td>174</td>
</tr>
</tbody>
</table>

*Including 85 believed lost to Soviet vessels, 19 to Japanese vessels, and 2 to Japanese or South Korean vessels.

As can be seen from Table 6, Soviet vessels have accounted for a very high proportion of the losses of U.S. crab pots in both the Bering Sea and Aleutian Islands. Also of significance is that vessels of South Korea have accounted for almost as many losses of crab pots as have Japanese vessels; yet, the Japanese fishery dwarfed that of South Korea and, in fact, has been much larger in the Bering Sea than that of the U.S.S.R. Not shown in the above table is the great reduction in the number of pot losses that has occurred in recent years. The number of skates of halibut gear reported as having been lost by North American fishermen are summarized in Table 7 according to nation causing the losses. Not shown in the table, but as also noted for crab pots, there has been a significant reduction in the loss of halibut gear in recent years.

TABLE 7.—Number of skates of halibut gear lost in Bering Sea and Aleutian Islands by North American fishermen, 1963—1976

<table>
<thead>
<tr>
<th>Nation causing loss</th>
<th>Number of skates lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.S.R.</td>
<td>15</td>
</tr>
<tr>
<td>Japan</td>
<td>89</td>
</tr>
<tr>
<td>South Korea</td>
<td>44</td>
</tr>
<tr>
<td>Unknown</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>145</td>
</tr>
</tbody>
</table>

As shown in Table 7, Japanese vessels have caused the most losses of halibut gear, as opposed to the situation for crab pots.

F. COOPERATIVE RESEARCH AND STATISTICAL EXCHANGE

(1) Cooperative Research—Several kinds of cooperative research have been carried out on the bottomfish and herring resources and fisheries of the Bering Sea-Aleutian Island region. The major kinds of cooperative research have been:

(a) Visits of U.S. and foreign scientists in laboratories and aboard vessels of the other country to become familiar with each other's research techniques, goals, and results.

(b) Exchange of scientific samples, data, and technical papers.

(c) Meetings of scientists to discuss results of research and to plan for future studies.

(d) Sampling by U.S. observers of commercial catches aboard foreign vessels.

(e) Joint operations of research vessels in cooperatively designed field programs.

All of the above kinds of cooperative research have been carried out with Japan. A large number of tangible benefits have accrued to the U.S., and for the past several years has included extensive at-sea sampling by U.S. observers aboard Japanese motherships and factory trawlers operating in the Bering Sea. Cooperative research with Japan has been facilitated by the existence of the International North Pacific Fisheries Commission, which has served as a forum for discussions and exchange of data and reports between the scientists of the U.S., Canada, and Japan.

Cooperative research with the U.S.S.R. has been at a much lower level of activity than with Japan, and has produced far fewer tangible results of benefit to the U.S. Of the several attempts at joint field activities in the Bering Sea-Aleutian Island region, none have been particularly successful. Cooperative bottomfish surveys by research vessels of the U.S. and U.S.S.R. have either failed to take place, have had to be substantially modified by the U.S. at the last minute with no chance of cooperation, or basic data collected by Soviet scientists have not been made available to the U.S. at the end of the field season. An exception was a cooperative halibut tagging program in which the U.S. lent one of its vessels available to personnel of the International Pacific Halibut Commission who tagged and released several thousand halibut in the western Bering Sea.

The major obstacle to meaningful cooperative research with the U.S.S.R. has been the absence of a set of mutually agreed upon objectives and priorities and a forum which allows as much dialogue as necessary to arrange the complicated logistics of joint field activity and agreed approaches to reaching mutual objectives.

Cooperative research with South Korea, the other major participant in the bottomfish fishery, has consisted of having its scientists spend a few weeks in Seattle, Washington, at the NMFS Northwest Fisheries Center and aboard a NOAA research vessel to become somewhat familiar with procedures used by U.S. scientists. Limited discussions have been held between U.S. and South Korean investigators at three technical workshops. At these workshops the South Koreans have had nothing substantive to report in the way of research conducted on the bottomfish resources of the Bering Sea-Aleutian Island region.

(2) Exchange of Statistics on Fishing Operations—Statistics are available to the U.S. by Japan on its fishing operations have been among the most detailed and complete collected by any nation in the world. The statistics provided by Japan include much information on origin of catches, species caught, size and kind of vessels used, fishing gear employed, and time period. An exception to this general rule has been for Japan's land-based Dragnet Fishery. Statistics on that fishery have not been as timely, detailed, or complete as those provided by Japan on its other fisheries. This appears to reflect the fact that they have been collected at the provincial level in Japan rather than by the Fisheries Agency of Japan, as has been the case for the other fisheries.

Statistics provided by the U.S.S.R. have been greatly inferior to those provided by Japan. From 1959 (when the Soviets began commercial operations of Alaska) until 1981, no statistics were provided on salmon catches or complete as those provided by Japan on its other fisheries. This appears to reflect the fact that they have been collected at the provincial level in Japan rather than by the Fisheries Agency of Japan, as has been the case for the other fisheries.

Statistics provided by the U.S.S.R. have been greatly inferior to those provided by Japan. From 1959 (when the Soviets began commercial operations of Alaska) until 1981, no statistics were provided on salmon catches or complete as those provided by Japan on its other fisheries. This appears to reflect the fact that they have been collected at the provincial level in Japan rather than by the Fisheries Agency of Japan, as has been the case for the other fisheries.
Alaska (lat. 65° N), and offshore to long 175°00' W— which in the north intercepts the Chukchi Peninsula of the Soviet Union at East Cape, just south of the Arctic Circle (FAO Statistical Area 67). Catches for such a huge area are of extremely limited value in assessing the impact of fishing on individual stocks of fish and shellfish which typically inhabit much smaller areas and is in stark contrast to the detailed statistics on catches which were published or otherwise made available by the United States, Canada, and Japan for these years.

As a result of a bilateral fisheries agreement concluded between the United States and the U.S.S.R., statistics on the fisheries of the two nations in the eastern North Pacific were exchanged, beginning in 1967. However, for most of the period since 1967 the data provided by the Soviets has lacked detail on the area of capture and on the species harvested. The practice, until recently, was to provide data on catches of only a few primary target species and to combine the catches of all remaining species in a "miscellaneous" or "other species" category. On a few occasions this had led to the anomalous situation whereby the reported catch of miscellaneous or other species approached or even exceeded the reported catches of some of the target species.

As regards other nations fishing for bottomfish in the Bering Sea-Aleutian Island region, Poland has provided data which bear on stock condition. The United States, Canada, and Japan have carried out a fairly large fishery for bottomfish but to date has not provided the U.S. with any useful statistics. Operations by Taiwanese vessels have been few and no statistics have been provided to the U.S.

3.0 Status of Stocks:

A. General Distribution and Abundance

The species of traditional importance to the region's trawl fisheries are listed in Table 8; their relative abundance can be inferred from the magnitude of recent catches. Prior to the mid-1960's, yellowfin sole and Pacific ocean perch were the primary targets of trawl fisheries; since then, walleye pollock has been far by the dominant element in the fishery. Except for salmon, a few hundred tons of Pacific halibut, and a small Eschmeyer fishery for spawning Pacific herring, the region's fisheries are taken exclusively by foreign fishermen.

Since walleye pollock has become the preeminent target of the region's fishery, other species have provided little more than by-catches. Exceptions include a distinct winter flounder fishery in the southeastern part of the region, a herring (trawl) and billfish fishery in the north central Bering Sea, and a relatively small fishery for Pacific ocean perch along the Aleutian Island chain.

Little is currently known of the population structure of most of the species in this region. Recent research now underway should soon begin to identify individual stocks and complement the available fishery data which bear on stock condition.

B. Current Status

Fishery data indicate that the groundfish resources of this region have suffered the effects of almost 20 years of purse fishing in which one after another of the most abundant species was fished down to the point where catch rates became uneconomical. This led to another species becoming the target. The success was: yellowfin sole; Pacific ocean perch; and now walleye pollock. As exploitation centered around each new species, bycatches of previous target species prevented their recovery. This phenomenon occurred on an inter-regional basis for shrimp and herring: shrimp stocks of the eastern Bering Sea were fished to commercial extinction in the early 1960's then effort shifted to the western Bering Sea where a similar trend is now occurring; herring in the western Bering Sea were quickly depleted in the mid-1960's—then effort shifted to the eastern Bering Sea where the stocks now appear to be deteriorating.

Specific comments concerning the major groundfish resources of the region follow.

1. Walleye Pollock—(a) Distribution. Walleye pollock are broadly distributed in shelf and upper slope waters (to 450 m) from the southern coast of Korea northward into the Bering Sea and off the North American coast southward as far as California. In North American waters it is most abundant in the eastern Bering Sea.

Pollock in the eastern Bering Sea occur in waters south of a line joining Cape Navarin and St. Matthew Island (Serobaba, 1970). As in the case with many boreal species, pollock have seasonal migrations (Figure 9).

The main wintering grounds for adult pollock lie north of Unimak Island along the outer shelf and upper slope (150-280 m) (Serobaba, 1967; Maeda, 1972) where bottom temperatures range from 2.3-4.5°C, with greatest concentrations...
in the 3°-4° C isotherm (Serobaba, 1970). As the water column warms in spring, pollock migrate to shallower water and spawn in depths of 50-300 m from March to the middle of July with the height of spawning in May (Serobaba, 1967). At that time surface water temperatures range between 1.4 and 3.3° C and bottom temperatures from below 0° C to 3.4° C. During this migration, larger fish mix with the smaller ones in shallow waters. When spawning begins, however, the sexually mature pollock generally separate from the nonspawning portion of the population (Maeda, 1972).

In summer and autumn pollock are distributed on the inner and outer shelf of outer Bristol Bay and northwest of the Pribilof Islands. With the onset of winter, the pollock move back across the shelf to deeper water for overwintering (Figure 7).

The eastern Bering Sea pollock resource is considered by some scientists (Maeda, 1972) to be composed of two stocks. Catch patterns suggest that these two stocks are separated at about 170° W longitude. The southeastern stock is the larger of the two and has over the years contributed much more to the fishery. Clear cut evidence is lacking to verify that these two stocks are in fact discrete because of different population reactions to environmental stresses (Ishida, 1967). Consequently, for practical purposes, analyses related to the appraisal of stock conditions assume the eastern Bering Sea pollock resource to be a single stock (Chang, 1974; Low, 1974, Takahashi, 1975).

**Figure 7.** Schematic diagram showing the concept of one and two stocks of pollock in the eastern Bering Sea (Maeda, 1972).

Estimates thus derived range from 1.11 million mt to 1.58 million mt (Low, 1974).

Inasmuch as MSY pertains to the average, long-term situation, it has limited utility as a basis for determining the allowable harvest of such a short-lived species as pollock for any given year.

Although this species may live as long as 12 years, throughout the history of the fishery comparatively few fish older than 6 years have been taken, with the dominant age classes being 3-6 years. Without the buffering effect of an accumulation of year classes distributed over a wide range of age classes, the productivity of such a stock can be expected to respond very rapidly to variations in recruitment caused by changing environment. Therefore, year-to-year management of the fishery must consider other biological indicators relevant to the stock in its current rather than past state.

For instance, the fishery could be managed in such a manner that the harvest does not exceed the recruitment into the population.

Takahashi (1975) has estimated the annual recruitment to the eastern Bering Sea population by age groups and in numbers and weight for the period 1968 to 1973 (Table 10) and found that annual recruitment ranged from 1 to 2 million mt. There are, however, practical problems associated with obtaining advance accurate estimates of annual recruitment.

(d) Status. Certain evidence indicates that the pollock stock of the eastern Bering Sea has in recent years been overfished: catches in 1971-74 exceeded the upper limit of the MSY range; catches in 1973 and 1974 exceeded Takahashi's estimates of recruitment for those years; the overall CPUE for Japanese pair trawlers in 1973 and 1974 was only one-third that of 1969; catch rates were sustained at rather high levels for about 4 years by shifts in the areal allocation of effort; however, since 1976, CPUE has been at comparatively low levels in all areas of the eastern Bering Sea. Similar trends have been noted in overall CPUE values (Figure 8).

Condition of the pollock stock may be more unfavorable than is apparent from these trends in CPUE, in that the fishery has substantially altered the abundance of the age groups in the population. The average size of pollock in the Japanese catch has declined from over 44 cm in 1965 to about 32.2 cm in 1975 (Table 11). This decline has resulted in the fishery now being heavily dependent upon pollock of younger age groups which were not exploited in the earlier years. In the past, catches were composed primarily of fish 3 through 5 years of age: in 1974, the 2-year-old age class was second in abundance in the Japanese catch and 1-year-old fish first appeared in measurable quantities (Figure 9).
Table 11.—Average body length of pollock taken in the Japanese eastern Bering Sea pollock fisheries (1964—75)

<table>
<thead>
<tr>
<th>Year</th>
<th>Japan fishery</th>
<th>U.S. observers</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>42.7</td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td>44.1</td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>42.5</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>42.1</td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td>42.7</td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>42.7</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>42.6</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>40.3</td>
<td></td>
</tr>
<tr>
<td>1973</td>
<td>37.7</td>
<td>36.2</td>
</tr>
<tr>
<td>1974</td>
<td>35.0</td>
<td>32.2</td>
</tr>
<tr>
<td>1975</td>
<td>36.2</td>
<td>35.0</td>
</tr>
</tbody>
</table>

1 Mean size based on size and catch data provided by the fisheries agency of Japan through INPFC.
2 Mean size based on catch data from fisheries agency of Japan and size data collected by U.S. observers aboard Japanese vessels.
3 Mean size based on U.S. observer size data weighted by catch data from fisheries agency of Japan for January to December 1974, by INPFC halibut conservation area and type of fisheries (Mother ship Fishery and North Pacific Trawl Fishery).

Pollock attain sexual maturity at about 3 years of age or about 30 cm in length (Ishida, 1967; Serobaba, 1967). Chang (1974) noted that yield is maximized when pollock are recruited into the fishery at ages 3—4, which corresponds to 38—40 cm in length. Considering that pollock first spawn at about 30 cm or 3 years of age, the fishery is obviously exploiting substantial numbers of pre-spawners which, if excessive, would have unfavorable effects on the productivity of the stock.

The reduction in average size of pollock in the catch can also be interpreted as being indicative of the entry of very strong year classes into the population. Results of research vessel surveys, however, show that the relative abundance of 2 and 3 year old pollock has been declining in recent years.

Considering (1) that there has been a steady decline in CPUE throughout the entire eastern Bering Sea, (2) that the CPUE of mature pollock has been severely reduced in abundance with substantial increases in the catch of pollock of pre-spawning sizes, and (3) that the abundance of incoming year classes appears to have been dropping, there is reason to believe that the condition of the eastern Bering Sea pollock resource has been deteriorating in recent years.

(a) Estimated equilibrium yield.
Knowledge of the eastern Bering Sea pollock stock condition is not exact enough to provide absolute values of recruitment and sustainable yield. Recent catches have been far in excess of MSY, and have forced the stock into a condition that will not allow MSY to be achieved. Therefore, equilibrium yield, under current conditions, would be substantially below MSY, perhaps near 1 million mt. An even lower catch would be required to allow the stock to rebuild, over a 1—3 year period, to a level that could produce MSY.

Recent evidence from tagging indicates that there may be two yellowfin sole stocks separated by a line connecting St. George Island (about 58°58' N, 164°14' W) and Cape Avinof (about 59°58' N, 164°14' W). (Figure 10.) The stock inhabiting the southern area is by far the larger as evidenced by the fact that between 1964 and 1974, more than 80% of the Japanese catch was taken from there. Although the results of U.S. research surveys do not conclusively confirm the discreteness of the two stocks, they do show that the greatest proportion of the total eastern Bering Sea yellowfin sole population is in the southern area.
Bering Sea is 19 years, at which a length of about 46 cm is attained. Wakabayashi (1974) reported the occurrence in Japanese catches of 20 year old fish and showed that the size at first spawning is 10.5 cm for males (2-3 yrs) and 18.5 cm (5-6 yrs) for females. The size at which 50% of the fish become mature is 13 cm (3-4 yrs) for males and 26 cm (8-10 yrs) for females. The size at which a maximum age of yellowfin sole in the eastern Bering Sea, constituting 73-85% of the total Soviet research vessel flatfish catches (Fadeev 1970).

Relative abundance of the yellowfin sole population has been evaluated by examination of catch per unit of effort (CPUE) of the Japanese trawl fisheries. Attempts have also been made to estimate the stock size of this population in terms of absolute biomass. To put the results of either procedure into perspective and to properly evaluate the current state of the stock requires a recapitulation of some historical events in the yellowfin flounder fishery.

Prior to the mid-1960's, the yellowfin sole was the principal target species of the eastern Bering Sea trawl fisheries. From 1954 through 1987, the Japanese were the only users of this resource with relatively low (1974) considers the stock to have passed through five phases of abundance: in the near virgin state of 1954-61, biomass was estimated to be about 600,000-1,000,000 mt; this followed in 1962-75 when biomass varied between 250,000-300,000 mt; during 1966-71 biomass increased moderately to about 470,000 mt; during 1971-73 biomass again declined then stabilized at a level somewhat less than 300,000 mt.

Although catches during the mid and late 1960's were much smaller than those of the peak years of production, they were too high to allow any sustained recovery of the resource and the stock remained in a depressed condition into the early 1970's (Bakka and Hirschhorn, 1975; Wakabayashi, 1975; International North Pacific Fisheries Commission, 1974) (Table 13; Figure 11).

Table 12.—Annual catches of yellowfin sole* in the eastern Bering Sea (east of 180°) in metric tons

<table>
<thead>
<tr>
<th>Year</th>
<th>Japan</th>
<th>U.S.S.R.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954</td>
<td>19,562</td>
<td>19,562</td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>14,850</td>
<td>14,850</td>
<td></td>
</tr>
<tr>
<td>1956</td>
<td>34,145</td>
<td>34,145</td>
<td></td>
</tr>
<tr>
<td>1957</td>
<td>25,000</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>62,200</td>
<td>62,200</td>
<td></td>
</tr>
<tr>
<td>1959</td>
<td>60,000</td>
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<tr>
<td>1975</td>
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* Catches by Japanese mother ship and North Pacific trawl fisheries. Catches for 1964-1965 are from Forrester et al. (1974) and for 1964 to 1975 from data provided to the United States by Japan. Includes catches of some other flounders up to 1961.


** January through July only.

** Information from trawl surveys in 1975-76 (expanded by the area-sweep technique) by the National Marine Fisheries Service indicates that the exploitable biomass of yellowfin sole (ages older than 6) has increased substantially to 865,000 mt (95 percent C.I. = 723,000-1,005,000 mt).

Figure 16.—Schematic diagram showing location of winter and summer concentrations of two yellowfin sole stocks in the eastern Bering Sea. For the late 1960's were much smaller than those of the peak years of production, they were too high to allow any sustained recovery of the resource and the stock remained in a depressed condition into the early 1970's (Bakka and Hirschhorn, 1975; Wakabayashi, 1975; International North Pacific Fisheries Commission, 1974) (Table 13; Figure 11).
<table>
<thead>
<tr>
<th>Season</th>
<th>Gear</th>
<th>Year</th>
<th>Catch (metric tons)</th>
<th>Number of hours or sets</th>
<th>Average horsepower</th>
<th>Effort (horsepower-hours or horsepower-sets in thousands)</th>
<th>CPUE in metric tons per 1,000 lph or hp-sets</th>
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<td>11,596</td>
<td>5,789</td>
<td>1,400</td>
<td>8,246</td>
<td>1.41</td>
</tr>
</tbody>
</table>

Figure 11.—Catches of yellowfin sole in the Bering Sea east of 180° by Japan and the Soviet Union

Figure 11.—Catches of yellowfin sole in the Bering Sea east of 180° by Japan and the Soviet Union
The peak catch of turbot was 63,300 mt in 1974. The term "turbot" generally includes wavefish, Greenland turbot, and yellowfin sole. Flatfishes other than yellowfin sole, rock sole, and Pacific halibut are concentrated mainly on the continental slope and therefore inhabit deeper waters than yellowfin sole, rock sole, and Pacific halibut. The status of these resources is difficult to evaluate because of their secondary importance in the fishery.

The peak catch of turbot was 63,300 mt in 1974: average catch over the next 7 years was about 27,800 mt (Table 14). In 1972, the catch increased to 56,000 mt — the second highest on record — then dropped to 46,100 mt in 1974. Because it is taken only incidentally to fisheries for other species, the status of turbot stocks is difficult to assess with standard data bases and analyses. Inasmuch as only catch data are available, the early catches (in 1964) and the 56,000 mt in 1972) apparently could not be sustained, MSY and equilibrium yield appear to be near the 1973-74 catch level of 40,000 mt (Low, 1976).

(c) Maximum sustainable yield. Fageev (1970) estimated natural mortality (M) of yellowfin sole to be 0.92. Using Wakabayashi's estimates of exploitable biomass for the period before the effects of heavy exploitation would have greatly depressed the virgin population (11.2-2.6 million mt) and applying Alverson and Perez's (1969) equation for a first approximation of "yield per exploitable biomass" gives a potential yield range of 125,000-270,000 mt. Similar calculations using Low's (1974) estimate of near-virgin biomass (60,000-1,000,000 mt) results in an MSY range of 70,000-117,000 mt.

(d) Status. After a short period of intense overexploitation and a decade of removals which, although much lower than during the peak years, were sufficient to prevent rebuilding — recent survey results indicate a substantial increase in the biomass of fish older than 4 years. Whether or not the stock can now be considered "healthy" or completely rebuilt, it does appear to be in much better condition than at any time during the last 15 years.

(e) Equilibrium yield. On the basis of Wakabayashi's (1975) virtual population analysis, an exploitation rate of 0.146 applied to fish older than age 6 results in an equilibrium yield.

Applying this exploitation rate to the current standing stock of yellowfin sole older than age 6 (725,000-1,005,000 mt; p. 61) provides an estimated current equilibrium yield of 106,000-147,600 mt.

(f) Other Flatfish.—Flounders, primarily yellowfin sole, were the incentive for both Japanese and Soviet fishing in the eastern Bering Sea. Flatfishes other than yellowfin sole and Pacific halibut are now, for the most part, caught incidentally to the expanded pollock fishery. The most important of these species, in order of relative abundance, are arrowtooth flounder, rock sole, and yellowfin sole. The status of these resources is difficult to evaluate because of their secondary importance in the fishery.

(1) Turbot. The term "turbot" generally includes wavefish, Greenland turbot, and yellowfin sole. Turbot are concentrated mainly on the continental slope and therefore inhabit deeper waters than yellowfin sole, rock sole, and Pacific halibut.

The peak catch of turbot was 63,300 mt in 1974: average catch over the next 7 years was about 27,800 mt (Table 14). In 1972, the catch increased to 56,000 mt — the second highest on record — then dropped to 46,100 mt in 1974. Because it is taken only incidentally to fisheries for other species, the status of turbot stocks is difficult to assess with standard data bases and analyses. Inasmuch as only catch data are available, the early catches (in 1964) and the 56,000 mt in 1972) apparently could not be sustained, MSY and equilibrium yield appear to be near the 1973-74 catch level of 40,000 mt (Low, 1976).

(g) Rock Sole. Rock sole are found mainly on the eastern Bering Sea shelf where yellowfin sole predominate. However, the abundance of this species is considerably less than that of yellowfin sole as indicated by catch rates and is an incidental catch to the yellowfin sole fishery.

Catches of rock sole varied between 2,500 mt in 1968 and 9,800 mt in 1970 (Table 14), increased to the historical peak of 87,000 mt in 1972, then decreased to 27,000 mt in 1974. These figures may not be accurate because of inconsistencies in the categorization of vessel catch records of rock sole as a separate species group.

Wolotira (1975) reported that catches during recent years have been maintained by the relatively strong year-classes of 1965 and 1966 and that these cohorts had been diminished by several years of exploitation with no sign of subsequent strong year-classes. Size composition data for 1974 do not indicate otherwise.

Based upon historical catch pattern and apparent lack of year-class strength in the stocks, MSY and equilibrium yield appear to be somewhere below the catch level of 1974, and perhaps 35,000 mt (Low, 1974).

Rock sole are found mainly on the eastern Bering Sea shelf, but on somewhat shallower grounds than occupied by yellowfin sole and rock sole. They are caught mainly as an incidental species in the yellowfin sole and pollock fisheries, so catch rates are not appropriate indicators of flatsole abundance.

Catches of flat sole have ranged from 6,000 mt in 1965 to 50,000 mt in 1971 (Table 14). From 1969 to 1971, the catch more than doubled (from 20,300 mt to 50,000 mt), declined to 15,000 mt in 1972, and increased again to 27,800 mt in 1974. These values, however, may not be very accurate because of inconsistencies in the categorization of flat sole as a separate species by Japanese fisheries (Takahashi, 1975). The U.S.S.R. on the other hand, provides no breakdown of the flat sole catch into the composition of its flounder catch; it is assumed to be similar to that of the Japanese fishery.

Weighted size composition data for flat sole taken in the Japanese fishery show that more small fish were taken in 1974 than in previous years. If there was neither selection for smaller fish nor a shift of the fishery to a different segment of the population, this indicates good recruitment of young fish into the fishery or lower abundance of larger individuals.

On the basis of recent catch trends and the indication of depletion (age-length, sex-length, and age-fecundity relationships suggest distinct stocks), flat sole appear to be slightly above the 1974 catch level, and near 39,000 mt (Low, 1976).
Of the two main stocks in the Bering Sea, the Aleutian stock, is at present, perhaps four times larger than that of the Eastern Slope. Chikuni estimated that in 1972 its biomass was close to 150 thousand mt. By comparison, biomass of the Eastern Slope stock is probably close to 35 thousand mt. Biomass estimates have not been made for more recent years but based upon CPUE analyses, they would undoubtedly be below those for 1972.

Catches from each of the stocks are shown in Table 15.

<table>
<thead>
<tr>
<th>Year</th>
<th>Eastern Slope</th>
<th>Aleutian</th>
<th>Total</th>
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<td>6</td>
<td>12</td>
</tr>
<tr>
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<td>42</td>
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<td>20</td>
<td>40</td>
</tr>
<tr>
<td>1974</td>
<td>14</td>
<td>15</td>
<td>29</td>
</tr>
</tbody>
</table>

* Less than 3,000 metric tons.
* Data is preliminary.


(b) Status. Based upon analyses by Chikuni (1975b) and Wolotira (1975a), the INPFC Sub-Committee on Bering Sea Groundfish concluded that it is apparent that stock abundance in the Eastern Slope region decreased drastically in the latter half of the 1960's. Since then it remained relatively stable but stock abundance was low (International North Pacific Fisheries Commission, 1975).

The spawning stock of ocean perch in the Eastern Slope region is considered to be considerably reduced from the level of the mid-1960's. Chikuni (1975b) showed that the early extensive ocean perch harvests by Japan and the U.S.S.R. had removed most of the older, more fecund fish from the stock. Therefore, in recent years, larval production by the stock must have been considerably reduced. Whether or not reduced larval production will result in reduced recruitment, however, has not been determined. Chikuni (1975a) also found that ocean perch are being recruited into the fishery 1-2 years younger than desired to achieve maximum yield per recruit. Since 1968, the fishery has been heavily dependent upon young fish from the strong year-classes of 1961 and 1962 (Chikuni, 1974b); because of recent, heavy removals of these young year-classes, their strength is not expected to prevail, and no other strong ones have appeared.

With regard to the Aleutian stocks, CPUE (mt per hour trawled) for Japanese stern trawlers has dropped from 7.3 in 1964 to 0.9 in 1972 and 0.8 in 1974 (Figure 12). Although the catch in 1974 was twice that of 1972, fishing effort more than tripled—reaching the highest level in history. Consequently, the catch rate in 1974 was less than that observed in 1973 and, indeed, was the lowest on record. Similar trends have occurred in other elements of the Japanese fishery.

In the early years of the fishery (1964-67), the size composition of the catch was relatively stable and dominated by fish greater than 28 cm (Figure 13). After that time, there were dramatic increases in the proportion of fish smaller than 28 cm, due to recruitment into the fishery of the strong year classes of 1961 and 1962 (Chikuni, 1974b) and in part to a considerable reduction in abundance of the larger older perch after 1967. The abundance of these older fish remained low through 1974.

On the whole, catch rate and size composition information suggest that in the Aleutian Region both abundance and average size have been considerably reduced since the early years of the fishery. Stock condition appears to have been poorest in 1972 but seems to have been improving slightly since then. The optimistic trend of 1972-74 may not, however, continue because of the high catch of 22,400 mt in 1974.

(c) Maximum sustainable yield: As for other species in the Bering Sea which
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have undergone considerable changes in population structure and abundance as a result of intensive "pulse" fishing, the interpretation of MSY must be viewed in its proper perspective. Under ideal resource conditions, MSY for the Pacific Ocean perch stock in the Eastern Slope Region may be as high as 32 thousand mt; that in the Aleutian Region may be as high as 75 thousand mt (Chikuni, 1975a).

Figure 13.—Catch-per-unit-effort by size increment for Pacific ocean perch harvested by stern trawlers of the Japanese North Pacific Trawl fishery in the Aleutian Region, 1964-74.

(d) Estimated equilibrium yield: Since 1960, the Eastern Slope Region has produced catches in excess of 32 thousand mt only twice (1961 and 1968). Following high catches, CPUE and catch decreased substantially—for example, the 32 thousand mt catch in 1968 has been followed by catches of less than 15 thousand mt per year. Judging from catch patterns through 1974, the ocean perch stock in the Eastern Slope Region could not support removals of even 10-15 thousand mt annually without detrimental effects to the already low level of stock abundance.

In the Aleutian Region, there were clear cases of overexploitation in the early stages of the fishery when amounts in excess of 90 thousand mt were taken consecutively from 1964 through 1966 (Wolotira, 1975b). Since then, catches have dropped to 12 thousand mt in 1973 and 22 thousand mt in 1974. It is evident that the sustained annual catch of 75 thousand mt estimated by Chikuni cannot now be realized because of the poor condition of this stock.

Because Ocean perch is a long-lived, slow-growing species with full maturity not occurring until age 9 and a life span of 25 years, stock conditions are not expected to improve for many years even if recruitment improves and removals remain at modest levels.

Low (1974) estimated equilibrium yield for both stocks combined, under stock conditions prevailing in the early 1970's, to be 12,000-17,000 mt. In view of the slight improvement noted in the Aleutian stock in very recent years, equilibrium yield might now be near 21,500 mt. Considering relative stock sizes and conditions, this yield might be reasonably apportioned as follows: 15,000 mt to the Aleutian stock; 6,500 mt to the Eastern Slope stock.

(5) Sablefish.—This species is covered thoroughly in a separate Preliminary Fishery Management Plan.

In general, sablefish stocks in the Bering Sea and Aleutian area are in poor condition, as evidenced by catch rates which have declined 24-93 percent since 1987 (Low, 1976).

Estimates of MSY, derived from a general production model, range from 10,000-20,000 mt, but slight overfishing for 15 years has caused a gradual decline in abundance, and the population in this region is now thought to be capable of producing an equilibrium yield of perhaps 8,000-10,000 mt.

(6) Pacific Cod.—a. Distribution and abundance of stock:  Pacific cod are distributed widely over the Bering Sea shelf but occur mainly on the continental slope. This distributional pattern is quite similar to that of pollock. During the early 1960's, when a fairly large Japanese longline fishery operated on the continental slope, cod was harvested by longliners for the frozen fish market. Beginning in 1964, the Japanese North Pacific trawl fishery for pollock expanded and cod became an incidental catch to the pollock fishery. At present, cod are believed to be only an occasional target species when high concentrations are detected during pollock fishing operations.

The annual catch of Pacific cod by Japan increased from 19,100 mt in 1964 to about 74,400 mt in 1970; since then, catches have varied between 41,000 and 50,600 mt. Catches by the USSR have increased from 2,300 mt in 1971 to 16,600 mt in 1974. Therefore, for all nations combined, the Pacific cod catch for 1974 was the second highest on record at 67,200 mt.

The biology and behavior of Pacific cod in the Bering Sea have not been studied adequately to delineate stocks; catch patterns suggest that only a single stock exists in the eastern Bering Sea. On the basis of catch history, the abundance of Pacific cod in the 1970's appears to be about 5 percent that of pollock. This estimate assumes that the catchability coefficients for pollock and cod are the same. However, it is more likely that this coefficient is lower for cod because of its pelagic and dispersed distribution.
(b) **Maximum sustainable yield.** Because of the lack of information concerning potential yield of cod in the Bering Sea and the difficulty of estimating its biomass, only a rough approximation of MSY is possible. Using Japanese commercial catch-effort statistics through 1973 and the surplus production model of Pella and Tomlinson (1969), Low (1974) estimated that the MSY for Pacific cod could be as high as 85,000 mt per year.

Size composition of cod landed by the Japanese fisheries generally varies from 30 to 80 cm (Figure 14). Because most of the cod were taken by trawl gear capable of retaining fish down to 20 cm and because there is no indication that selection for larger cod had taken place in the fishery, the proportion of small fish (below 40 cm) suggests that recruitment was low both in 1973 and 1974. This does not necessarily indicate that the stock is in poor condition, as year-to-year variations in recruitment are normal and expected. Since the stock (and fishery) is made up of fish varying over a wide size (and presumably wide age) range, a few years of poor recruitment should not be cause for concern.

(c) **Status.** Pruter (1975) explained that the traditional catch-per-unit-effort measure of stock abundance is probably not a reliable estimator of Pacific cod abundance in the Bering Sea. Although catch rates for cod by gear type were computed by Takahashi (1975) and Low (1976) to indicate relative cod abundance, they are considered inadequate to gauge the current status of stocks. Japanese Danish seiners and pair trawlers account for most of the cod landings, but cod catch rates for these gear types—knowing that their effort is largely directed to target small walleye pollock—impart little information on the condition of stocks.

In response to the critical halibut situation, arrangements were made through the International North Pacific Fisheries Commission and bilateral agreements with Japan and the U.S.S.R. for winter closures of key trawl grounds where juveniles were known to concentrate and were highly susceptible to trawls. These arrangements, instituted in late 1973, are still in force in slightly modified form.

In 1973, the demise of the North American setline fishery in the Bering Sea (and the halibut resource which supported it) has been well documented over the past 10 years (Table 16). Part of this deterioration may have been caused by combined North American and Japanese setline catches during 1966-68, but the situation was undoubtedly aggravated by the enormous incidental catch of juvenile halibut by Japanese and Soviet trawlers (International Pacific Halibut Commission, 1976; Hoag and French, 1974, 1975). Even though such incidentally caught halibut are to be returned to the sea by Japanese fishermen, most do not survive. MSY as it applies to the setline fishery is believed by IPHC to be in the order of 2,000-3,000 mt. Annual trawl surveys conducted by IPHC to estimate relative abundance of juvenile halibut showed that during 1986-72 catch per hour dropped from 31.8 to 3.1 individuals but increased in 1975 to 11.9. The recent increase is considered to be at least partially a result of the winter trawl closures. If such is the case, and if similar protective measures continue, IPHC believes that enhancement of the North American setline fishery should become apparent by about 1980.

**Figure 14.**—Length frequency distributions of Pacific cod from samples of catches by the Japanese mothership, North Pacific trawl, and longline fisheries in the Bering Sea, 1964-74.

**Table 16.**—Catch (metric tons, round weight) of Pacific halibut by North American and Japanese setlines in the Bering Sea.

<table>
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<th>North American setline</th>
<th>Japanese setline</th>
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<td>2,584</td>
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<td>2,240</td>
<td>4,740</td>
<td>6,980</td>
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<td>1968</td>
<td>3,408</td>
<td>6,931</td>
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<td>1969</td>
<td>4,908</td>
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<td>12,807</td>
</tr>
<tr>
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<tr>
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<tr>
<td>1974</td>
<td>2,114</td>
<td>2,424</td>
<td>4,538</td>
</tr>
</tbody>
</table>

1 Includes an unknown catch by trawls.

A winter trawl closure and a ban on retention of trawl-caught halibut are key elements of this plan—they are de-
signed to improve somewhat on the existing arrangements to hasten halibut stock rehabilitation and U.S. fishing potential.

(8) Herring—There are three principal fisheries for Pacific herring in the eastern Bering Sea: a Japanese trawl fishery, a Soviet trawl fishery, and a Japanese gillnet fishery (Table 17). The Republic of Korea conducted a minor trawl fishery for herring off the Bering Sea coast of Alaska in 1974. The estimated catch by that fishery was 200 mt. The main trawl fisheries operated along and inside the 200-meter line between the Pribilof Islands and St. Matthew Island during the winter-spring months. November to March. The gillnet fishery operates off the Bering Sea coast of Alaska from Bristol Bay to Norton Sound during the spring months, usually April into June.

Herring is a species that shows strong schooling and migratory characteristics. Rumyantsev and Darda (1970) noted periodic large concentrations of herring which winter near Nunivak Island, Unimak Island, St. Matthew Island, and the Pribilofs, then move toward the Alaskan coast and into the Bays during summer.

Most concentrations large enough to sustain commercial fisheries are found in waters shallower than 200 meters. Their stock sizes vary considerably from year to year as year-class strength has a tendency to fluctuate widely. Because of this potential for annual variation in abundance (hence yield), MSY has little value.

Table 17. Catch of herring in metric tons by Japanese and Soviet trawl vessels west of 175° W. in the Bering Sea, excluding the Aleutian region, 1964-75.

<table>
<thead>
<tr>
<th>Fishing year (July-Sept)</th>
<th>Japanese trawl</th>
<th>Japanese gillnet</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1964-65</td>
<td>1964</td>
</tr>
<tr>
<td></td>
<td>1,367</td>
<td>41,567</td>
</tr>
<tr>
<td></td>
<td>1965-66</td>
<td>2,117</td>
</tr>
<tr>
<td></td>
<td>1966-67</td>
<td>34,679</td>
</tr>
<tr>
<td></td>
<td>1967-68</td>
<td>4,603</td>
</tr>
<tr>
<td></td>
<td>1968-69</td>
<td>1,585</td>
</tr>
<tr>
<td></td>
<td>1969-70</td>
<td>660</td>
</tr>
<tr>
<td></td>
<td>1970-71</td>
<td>1,949</td>
</tr>
<tr>
<td></td>
<td>1971-72</td>
<td>3,337</td>
</tr>
<tr>
<td></td>
<td>1972-73</td>
<td>4,721</td>
</tr>
<tr>
<td></td>
<td>1973-74</td>
<td>6,001</td>
</tr>
<tr>
<td></td>
<td>1974-75</td>
<td>7,461</td>
</tr>
<tr>
<td></td>
<td>1975-76</td>
<td>8,354</td>
</tr>
</tbody>
</table>

NOTICES

Partent information concerning stock condition, sustainable yields under current conditions, domestic production potentials and the surplus available for foreign use is summarized in Table 18.

1. Walleye Pollock—Equilibrium yield for this resource is believed to currently be about one million mt. In order to begin restoring the population to the level of abundance that could produce MSY, a TAC of 850,000 mt would be appropriate. This, however, would result in a single-step, one-third reduction in the foreign pollock catch. Anticipating little U.S. involvement in this fishery in the immediate future, and in an attempt to minimize the abruptness of economic disruption in the foreign fisheries, the TAC in 1977 is set at 950,000 mt. This harvest level is not expected to permit significant rebuilding to occur, but it is believed to be low enough to arrest the downward trend in abundance.

2. Yellowfin Sole—Although the current estimate of exploitable biomass is based on seemingly firm survey data, and the exploitation rate used to estimate equilibrium yield is based on a generally recognized population model, the yellowfin sole resource is obviously not stable. Therefore, the TAC will be set conservatively at the low end of the equilibrium yield range—at 106,000 mt. This will allow a catch in 1977 that is more than 50 percent greater than the average of the last three years of record (1972-74).
### Table 16: Total allowable level of foreign fishing in the Bering Sea and Aleutian Islands trawl fishery

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Pollock</td>
<td>Good</td>
<td>1,000,000</td>
<td>1,000,000</td>
<td>1,000,000</td>
<td>Overfished</td>
<td>95,000</td>
<td>0</td>
<td>950,000</td>
</tr>
<tr>
<td>Yellowfin sole</td>
<td>Fair</td>
<td>51,900</td>
<td>50,000</td>
<td>100,000</td>
<td></td>
<td>105,000</td>
<td>0</td>
<td>105,000</td>
</tr>
<tr>
<td>Other flounders</td>
<td>Fair</td>
<td>100,000</td>
<td>15,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pacific Ocean perch</td>
<td>Good</td>
<td>62,000</td>
<td>60,000</td>
<td>130,000</td>
<td></td>
<td>105,000</td>
<td>0</td>
<td>105,000</td>
</tr>
<tr>
<td>Sablefish</td>
<td>Fair</td>
<td>8,000</td>
<td>30,000</td>
<td>8,000</td>
<td>Slight overfishing for 15 yr has caused gradual decline in current level</td>
<td>10,000</td>
<td>0</td>
<td>10,000</td>
</tr>
<tr>
<td>Cod</td>
<td>do</td>
<td>64,000</td>
<td>8,000</td>
<td>64,000</td>
<td></td>
<td>85,000</td>
<td>0</td>
<td>85,000</td>
</tr>
<tr>
<td>Halibut</td>
<td>Excel.</td>
<td>300</td>
<td>2,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Herring</td>
<td>Poor</td>
<td>26,000</td>
<td>21,000</td>
<td></td>
<td>Overfished; probably subject to highly incidental mortality of juvenile cause by trawling</td>
<td>21,000</td>
<td>0</td>
<td>21,000</td>
</tr>
<tr>
<td>Squid</td>
<td>do</td>
<td>&lt;5,000</td>
<td>&gt;10,000</td>
<td>&gt;10,000</td>
<td>Known to be large resource</td>
<td>10,000</td>
<td>0</td>
<td>10,000</td>
</tr>
<tr>
<td>Other</td>
<td>do</td>
<td>104,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Notes

1. Applies to combined long-lin and trawl catch.
2. Includes Canadian catch.

(3) Other Flounders.—The TAC for this species category in 1977 will be set at the level of current equilibrium yield—95,000 mt. (4) Pacific Ocean perch.—The TAC for this species in 1977 will be set at the equilibrium yield of 130,000 mt. Because stock condition and potential yield are quite different in the Bering Sea and the Aleutian area, the TAC will be divided into 60,000 mt for the eastern Bering Sea proper and 15,000 mt from the Aleutian area.

(5) Sablefish.—Equilibrium yield for this resource is believed to currently be about 8,000 to 10,000 mt. In order to restore the population to the level which will eventually produce MSY, the TAC for 1977 will be set at 30,000 mt. Considering separately the condition of stocks in the eastern Bering Sea proper and along the Aleutian Island chain, the TAC will be subdivided into 2,000 mt from the Aleutian area and 8,000 mt from the Bering Sea proper.

(6) Cod.—At present, there is no reason to believe that cod stocks in the Bering Sea are in poor condition; neither, however, is there evidence to show that higher catches would be sustainable. In fact, when the total catch exceeded 74,000 mt in 1970, catches subsequently declined. Therefore, until further information concerning recruitment becomes available, total allowable catch will be held at the equilibrium yield level of 64,000 mt.

(7) Halibut.—The 1977 TAC for halibut will be controlled by measures adapted by the International North Pacific Fisheries Commission and the International Pacific Halibut Commission.

(8) Squid.—A pre-emptive TAC of 15,000 mt will be set for 1977, with adjustments.

(9) Other Species.—The TAC for this species category in 1977 will be set at 10 percent below the last catch of record—93,600 mt—with the intention of similar reduction in each succeeding year until it reaches 10 percent of the total catch of the fishery. This phase reduction is intended to:

(a) Prevent circumventing individual species allocations by reporting significant overages in a large “Other” category.

(b) Prevent excessive exploitation of small or previously unflushed stocks which are unregulated because of a lack of fishery or data; and

(c) Force more precise statistical reporting for resource assessment and management purposes.

### 5.0 Conservation and Management Measures Applicable to Foreign Fishermen

#### A. Regulations

The management policy for the Bering Sea shall be to arrest the decline in abundance of overfished stocks and allow them to begin rebuilding to levels that will produce MSY; to rebuild the halibut resource of the region to a level that will allow a viable U.S. setline fishery; and to prevent stocks that are currently heavily fished from being overfished.

All foreign vessels wishing to operate in this Management Unit must obtain a permit from the Secretary of Commerce.

(1) Region-wide Restrictions.—(a) No retention of salmon, halibut or continental shelf fishery resources to prevent over-exploitation of species of special importance to U.S. fishermen.

(b) No trawling or gillnetting within 12 miles of the baseline used to measure the Territorial Sea, except in the western Aleutian Islands as described in Appendix A.

(c) No fishing for shrimp (earlier foreign over-exploitation reduced this resource to commercial extinction).

(d) Time-Area Closures.—(a) No trawling year-round in the Bristol Bay “Pot Sanctuary,” i.e., in the area enclosed by straight lines from Cape Sarichef to 55°16’ N-166° W, to 56°20’ N-163° W, to 58°10’ N-166° W, then due south along 160° W to the Alaska Peninsula (to prevent conflicts between foreign mobil gear and concentrations of U.S. crab pots).

(b) No trawling from December 1 to May 31 in the following INPFC Conservation Areas (Figure 15) (to protect winter concentrations of juvenile halibut, to protect spawning concentrations of pollock and flounders).

No trawling from December 1 to May 31 in the following INPFC Conservation Areas (Figure 15) (to protect winter concentrations of juvenile halibut, to protect spawning concentrations of pollock and flounders).
Figure 15.—Time-area closures pertaining to foreign fishermen in the Bering Sea (area descriptions are INPFC Halibut Conservation Areas).

- NO HERRING FISHING YEAR-ROUND
- NO TRAWLING YEAR-ROUND
- NO TRAWLING DEC. 1 - MAY 31

FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
B. STATISTICAL REPORTS

(1) Annual.—Each nation whose fishermen operate in the Region shall report by May 30 of the following year—annual catch and effort statistics, as follows: Effort in hours trawled, by vessel class, by gear type, by month, by $\frac{1}{2}^\circ$ (lat.) X $1^\circ$ (long.) statistical area; Catch in metric tons, by vessel class, by gear type, by month, by $\frac{1}{2}^\circ$ (lat.) X $1^\circ$ (long.) statistical area, by the following species groupings:

- Yellowfin sole, rock sole, flathead sole, arrowtooth flounder, Greenland turbot, other flounders, Pacific ocean perch, Pacific cod, sablefish (backcod), walleye (Alaska) pollock, Atka mackerel, Pacific herring, squid, any other species taken in excess of 1,000 mt, other fishes.

(2) Monthly.—In addition to the annual statistical report in (1) above, each nation will report by the end of the following month, provisional fishery information for each month as follows: Effort in vessel-days on the grounds by vessel-class and gear-type; and Catch in metric tons of flounders, rockfishes, cod, pollock, sablefish, Atka mackerel, herring, squid, and others, for each of the areas shown in Figure 16.
The appropriate fleet commander or individual vessel master will report by radio to the management of fishing, the arrival in this management unit of each fishing and processing vessel, giving the vessel's name and other identifying marks, size, and intended target species. Further, such reports will be made at the time of departure of each vessel from the Region. These reports, augmented with U.S. surveillance observations and monthly catch and effort reports, will be used to monitor adherence to limitations.

D. Observers

All vessels of each nation operating in this management unit will have available at no cost to the U.S. accommodation for one U.S. observer. Observers will be assigned to individual vessels and for periods at the discretion of the U.S. to measure daily catch rates, compositions of species, size, and age composition; collect other biological data as appropriate; determine location and duration of hauls; and observer gear dimensions and performance.

E. Research

Bona fide fishery or fishery-related research (but not exploratory fishing) by foreign governments will be encouraged. Valid results of such research will be considered by the management entity in determining total allowable catches and other management measures. Cooperative U.S.-foreign research ventures will be planned and executed when they are found to be in the best regional interest of the U.S.

6.0 Relation to National Standards

The prescriptive measures contained in this Preliminary Fishery Management Plan (total allowable catches, allocation to individual vessels, quotas, regulations pertaining to foreign fishermen) have been designed to be consistent with the seven national standards listed in Pub. L. 94-265.

Total allowable catches are entirely for the purpose of preventing overfishing (standard No. 1), are based upon the best scientific evidence available (standard No. 2), and are applied to the extent possible to individual stocks or stock complexes throughout their range (standard No. 3).

Inasmuch as this document deals solely with foreign fisheries, that provision of the legislation concerning nondiscrimination among the residents of states (standard No. 4) does not apply.

Those regulations which isolate the foreign trawl fisheries from fisheries for other species (2.4.1.2.a) and from key areas where there are incidental catches of species especially important to the U.S. (2.4.1.2.b) will promote efficiency in resource utilization (standard No. 5) by reducing potentials for gear conflict, incidental catch of non-target species, and exploitation of juvenile fish which have not reached the size where cohort production is maximized. Further, the provision (24.1.2.d) which calls for termina

7.0 References


Whitefin sole


Yukon sole


NOTICES


21 p.

Pacific Ocean perch


Sablefish


NOTICES

II. Misty Moon Ground

That area bounded by straight lines connecting the following coordinates in the order listed:

North latitude

West longitude

60°30'

170°24'

58°20'

169°30'

56°30'

168°40'

55°30'

167°10'

53°30'

165°20'

APPENDIX B—SUMMARY

CONDITIONS AND RESTRICTIONS

Subpart F—Bering Sea and Aleutian Islands Trawl Fishery

1.0 Definitions

(a) Unless otherwise defined herein, the terms used in this Subpart will have the meanings ascribed to them.

(b) The conditions and restrictions shall apply to all species of fish and invertebrates taken in trawl gear.

(c) The regulatory area for taking those species listed in (b) above is defined to include that portion seaward of the Territorial sea in the Bering Sea and Aleutian Islands over which the United States exercised fisheries jurisdiction.

2.0 Catch quotas

(a) The 1977 annual catch quotas for foreign fishermen in the Bering Sea and Aleutian Islands are as follows:

Species and area

Catch quota (metric tons end area)

Pollock

550,000.

Yellowfin sole

100,000.

Other flounders

100,000.

Pacific Ocean perch

5,000.

Rock sole

3,000.

Pacific cod

20,000.

Herring

10,000.

Sablefish

3,000.

Cod

5,000.

Herring

10,000.

Walleye (Alaska) pollock

1,000.

Bering Sea, Aleutians

3,000.

A. Areas

1. Between 169° and 172° West longitude, dragnet fishing from May 1 to November 30 inclusive, and longline fishing year-round.

2. Between 170° and 172° West longitude, dragnet and longline fishing year-round.

3. Between 172° and 176° West longitude, longline fishing from April 1 to October 31 inclusive.

4. West of 176° West longitude, dragnet fishing from May 1 to December 31 inclusive and longline fishing year-round.

5. In the waters of the Pacific coast of the Aleutian Islands:

(a) Between 169° and 172° West longitude, dragnet and longline fishing and loading year-round.

(b) Between 172° and 176° West longitude, longline fishing from April 1 to October 31 inclusive.

(c) West of 176° West longitude, dragnet fishing from May 1 to December 31 inclusive and longline fishing year-round.

3. Between 176° and 178°30' West longitude, dragnet fishing from July 1 to October 31 inclusive.

4. West of 178°30' West longitude, dragnet fishing year-round.

4.0 Closed seasons and areas

(a) No trawling year round in the Bristol Bay "Pot Sanctuary", i.e., in the area enclosed by straight lines from Cape Sardicha to 55°10'N—160°40'W, to 55°20'N—162°10'W, to 54°00'N—163°00'W, to 55°10'N—163°00'W, then due south along 160°00'W to the Alaska Peninsula.

(b) No trawling from December 1 to May 31 in the following INPFC Conservation Areas:

Area A

1. Between 166°—southern 56°30'N.

2. Between 166°W—southern 56°N.

3. Area A—southern 56°N.

(c) The entire region will be closed to fishermen of a nation when that nation's allocation of any species listed in Section 2.0 is exceeded.

5.0 Gear restrictions

Gear restrictions for foreign fishing in the regulatory area are described in Section 3.0 during the open season for specific areas.

6.0 Statistical reporting

(a) Annually. Each nation whose fishermen operate in the Region shall report by May 30 of the following year—annual catch and effort statistics, as follows: "Effort" in hours trawled, by vessel class, by gear-type, by month, by 1/2° (lat.) x 1° (long.) statistical area; "Catch" in metric tons, by vessel class, by gear-type, by month, by 1/2° (lat.) x 1° (long.) statistical area, by the following species groupings:

Yellowfin sole

Rock sole

Flathead sole

Arrowtooth flounder

Greenland turbot

Other flounders

Pacific ocean perch

Pacific cod

Sablefish (blackcod)

Walleye (Alaska) pollock

Atka mackerel

Finnish Halibut

Any other species taken in excess of 1,000 mt

Other fishes

(b) Monthly. In addition to the annual statistical report in (a) above, each nation will report by the end of the following month, provisional fishery information for each month as follows:

"Effort" in vessel-days on the grounds, by vessel-class, and gear-type; and "Catch" in metric tons of Bounteous, rock-fishes, cod, pollock, sablefish, Atka mackerel, herring, and others.

7.0 General restrictions

(a) No retention of salmon, halibut, or CSFR.

(b) No trawling within 12 miles of the baseline used to measure the Territorial Sea, except in the Western Aleutian Islands as described in Section 3.0 above.

(c) No fishing for shrimp.

[Fed Reg 42:9331 Filed 2-14-77; 8:45 a.m.]
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

SNAIL FISHERY OF THE EASTERN BERING SEA
Preliminary Fishery Management
NOTICES

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
SNAIL FISHERY OF THE EASTERN BERING SEA
Preliminary Fishery Management

On the 4th of February, 1977, the Secretary of Commerce, through an appropriate delegation of authority to the Associate Administrator for Marine Resources of the National Oceanic and Atmospheric Administration and the Director of the National Marine Fisheries Service, published a Notice of Determination, Preparation, Issuance, and Implementation of Preliminary Fishery Management Plans at 42 FR 6873. In order that each Plan may have the widest possible circulation, the Secretary has decided that each should be published in the Federal Register.

Dated the 7th day of February 1977 at Washington, D.C.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

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   E. Regulatory history.
   F. History of cooperative research and statistical exchange.
3.0 Status of stocks.
4.0 Total allowable catch and foreign allocation.
5.0 Conservation and management measures applicable to foreign fishery.
   A. Regulations.
   B. Statistical reports.
   C. Fleet disposition reports.
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   E. Research.
6.0 References.
7.0 Appendix.
1.0 Introduction

The snail fishery is based on the snail resource of the eastern Bering Sea, which consists of some 35 different species of large marine gastropods. The commercial harvest by Japan began in 1971 and catches have ranged between 3,000 and 3,500 metric tons of recovered edible meat (11,000 to 13,000 metric tons live weight). The snails are taken in pots and the catch is processed at sea. Fishery statistics and research data are very limited. No U.S. fishery occurs.

This preliminary management plan is for foreign fisheries that take snails (marine gastropods) in the eastern Bering Sea within U.S. jurisdiction.

2.0 Description of the Fishery

A. Areas and Stocks Involved

At least 35 different species of large marine snails inhabit the eastern Bering Sea shelf. Some of these are more or less evenly distributed over the entire shelf, but most have limited distributions within the area. A list of 15 of the most abundant large marine snails of the eastern Bering Sea, as determined by National Marine Fisheries Service (NMFS) trawl surveys, is given in Table 1. Some of these species are harvested in the Japanese commercial fishery while others, seemingly as abundant in different areas, remain unexploited. Distributions of the 15 species are described in Figures 1-15.

Some problems exist regarding the taxonomy of eastern Bering Sea snails. A number of species taken in the Japanese commercial fishery have different names in NMFS studies. To clarify these discrepancies, a table (Table 2) has been prepared that relates the names used in Japanese works on the eastern Bering Sea snail resources to those used by NMFS. It must be kept in mind that in this report the names used will be those in use by NMFS.

By far the most important commercially utilized species in the eastern Bering Sea is Neptunea pribiloffensis (Dall, 1919). In his study of the 1973 Japanese fishery northwest of the Pribilofs, Nagai (1974) found that 80 percent by number and 90 percent by weight of the entire catch consisted of the three species N. pribiloffensis, Buccinum scalariforme Moller, 1842; and B. angulosum Gray, 1839 (Table 3), with N. pribiloffensis contributing 69 percent of the catch by number and 71 percent by weight. Buccinum scalariforme made up 16 percent by number and 11 percent by weight; Buccinum angulosum made up 19 percent by number and 11 percent by weight. The lack of variety in the catch is due, at least in part, to the limited area of operation of the vessel used in the study. That area extended 60 miles latitudinally and 80 miles...
Table 1. — A list of fifteen of the most abundant large eastern Bering Sea snails listed roughly in order of decreasing abundance.

<table>
<thead>
<tr>
<th>Species</th>
<th>Figure showing distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neptunia priilofoensis (Dall, 1919)</td>
<td>Figure 1</td>
</tr>
<tr>
<td>N. heros (Gray, 1850)</td>
<td>Figure 2</td>
</tr>
<tr>
<td>N. lyrata (Gmelin, 1791)</td>
<td>Figure 3</td>
</tr>
<tr>
<td>N. ventricosa (Gmelin, 1791)</td>
<td>Figure 4</td>
</tr>
<tr>
<td>Eulithinia oreconensis (Reedfield, 1894)</td>
<td>Figure 5</td>
</tr>
<tr>
<td>Bucinanum angulossum Gray, 1839</td>
<td>Figure 6</td>
</tr>
<tr>
<td>P. scalariforme Moller, 1842</td>
<td>Figure 7</td>
</tr>
<tr>
<td>B. plectrum Stimpson, 1865</td>
<td>Figure 8</td>
</tr>
<tr>
<td>Beringius beringii (Middendorf, 1849)</td>
<td>Figure 9</td>
</tr>
<tr>
<td>Volutospis middendorfii (Dall, 1891)</td>
<td>Figure 10</td>
</tr>
<tr>
<td>Clinopegma magna (Dall, 1875)</td>
<td>Figure 11</td>
</tr>
<tr>
<td>Plectinus kroeyeri (Moller, 1842)</td>
<td>Figure 12</td>
</tr>
<tr>
<td>Volutospis fragilis (Dall, 1891)</td>
<td>Figure 13</td>
</tr>
<tr>
<td>N. polare Gray, 1839</td>
<td>Figure 14</td>
</tr>
<tr>
<td>Pyrulofusus deformis (Reeve, 1847)</td>
<td>Figure 15</td>
</tr>
</tbody>
</table>

Figure 1: Distribution of Neptunia priilofoensis (Dall, 1819) in the eastern Bering Sea as determined by NPS trawl surveys in 1975.
Figure 2. Distribution of ‹species› in the eastern Bering Sea as determined by NEA 1975.

Figure 3. Distribution of ‹species› in the eastern Bering Sea as determined by NEA 1975.
Figure 1. Distribution of *Nepthia oregonensis* (Roberts, 1961) in the eastern Bering Sea as determined by NFRS trawl survey in 1976.

Figure 2. Distribution of *Euphasia pacifica* (Ehrenberg, 1840) in the eastern Bering Sea as determined by NFRS trawl survey in 1978.
Figure 6. Distribution of Bocconia angolensis Gray, 1839 in the eastern Bering Sea as determined by NPS trawl survey in 1975.

Figure 7. Distribution of Bocconia scalariforme Waller, 1842 in the eastern Bering Sea as determined by NPS trawl survey in 1975.

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Figure 8. Distribution of Buccim plectrum Stimpson, 1855 in the eastern Bering Sea as determined by W-IFS trawl survey in 1973.

Figure 9. Distribution of Beringia beringi (Simpson, 1949) in the eastern Bering Sea as determined by W-IFS trawl survey in 1973.
Figure 10: Distribution of *Volvospisia middendorffii* (Soll, 1891) in the eastern Bering Sea as determined by FWS trawl survey in 1975.

Figure 11: Distribution of *Climacopera nana* (Soll, 1875) in the eastern Bering Sea as determined by FWS trawl survey in 1975.
Figure 12. Distribution of *Pteropus kroyeri* (Moller, 1882) in the eastern Bering Sea as determined by NSF trend survey in 1974.

Figure 13. Distribution of *Eolimnopus cristalis* (Dall, 1894) in the eastern Bering Sea as determined by NSF trend survey in 1974.
Figure 14. Distribution of Bocconia polaris Gray, 1830 in the eastern Bering Sea as determined by NOS trawl survey in 1975.

Figure 15. Distribution of Pseuduscliei denticulatus (Bosc, 1867) in the eastern Bering Sea as determined by NOS trawl survey in 1975.
Table 1.-- A comparison of the names used in literature on the Japanese eastern Bering Sea snail catch by Nagai (1974) and those currently in use by National Marine Fisheries Service.

<table>
<thead>
<tr>
<th>Nagai</th>
<th>NMFS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neptunea interseculpta pribiloffensis (Dall, 1919)</td>
<td>N. pribiloffensis (Dall, 1919)</td>
</tr>
<tr>
<td>Baccinum tenue (Gray, 1939)</td>
<td>B. scalariforme Müller, 1842</td>
</tr>
<tr>
<td>Baccinum angulossum (Gray, 1839)</td>
<td>Same</td>
</tr>
<tr>
<td>Baccinum ocellatum (Dall, 1917)</td>
<td>B. scalariforme Müller, 1842</td>
</tr>
<tr>
<td>Plicifusus kroyeri (Møller)</td>
<td>Plicifusus kroyeri (Møller, 1842)</td>
</tr>
<tr>
<td>Patrithron oregonensis</td>
<td>Same</td>
</tr>
<tr>
<td>Buccinum subreticulatum (Habe et Ito nov)</td>
<td>B. polare Gray, 1839</td>
</tr>
<tr>
<td>Beringius beringii (Midd, 1847)</td>
<td>Beringius beringii (Midd, 1849)</td>
</tr>
<tr>
<td>Neptunea ventricosa varicifera (Dall, 1907)</td>
<td>N. heros (Gray, 1850)</td>
</tr>
<tr>
<td>Volutopsia middendorfii (Dall, 1891)</td>
<td>Same</td>
</tr>
<tr>
<td>Clinopogon buccinoides (Habe et Ito)</td>
<td>C. nagura (Dall, 1875)</td>
</tr>
</tbody>
</table>

Table 3.-- Species composition by percent weights and numbers of a portion of the 1973 Japanese eastern Bering Sea snail catch (Adapted from Nagai, 1974).

<table>
<thead>
<tr>
<th>Snail</th>
<th>Percent by number</th>
<th>Percent by weight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neptunea pribiloffensis</td>
<td>46.7</td>
<td>70.8</td>
</tr>
<tr>
<td>Buccinum scalariforme</td>
<td>25.1</td>
<td>16.5</td>
</tr>
<tr>
<td>Buccinum angulossum</td>
<td>19.2</td>
<td>13.2</td>
</tr>
<tr>
<td>Plicifusus kroyeri</td>
<td>3.5</td>
<td>2.1</td>
</tr>
<tr>
<td>Patrithron oregonensis</td>
<td>3.8</td>
<td>2.1</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>2.2</td>
<td>0.0</td>
</tr>
</tbody>
</table>
A number of other species were reported as being less commonly taken in the Japanese catch. All of these species: Plicifusa kroeyeri (Moller, 1842); Pusitriton oregonensis (Redfield, 1848); Buccinum polare (Gray, 1839); Beringius berihgii (Middendorff, 1849); Neptunea heros (Gray, 1850); Volutepesius middendorfii (Dal, 1891); and Clinopegma magna (Dal, 1875) are among the 15 most abundant species as recorded in NMFS trawl surveys.

All of the species under discussion are truly creatures of the continental shelf in that they lack even a pelagic larval stage. These snails spend their entire life, which probably exceeds 10 years in the larger Neptunea, in contact with the continental shelf. Eggs are laid in capsules that are usually attached to live or dead snails and from which fully formed juvenile snails hatch.

**History of Exploitation**

The fishery for marine gastropods in the eastern Bering Sea began in 1971 by Japan. Other Japanese north Pacific snail fisheries occur off east Sakhalin Island and in the northern Okhotsk Sea in Soviet waters. It was a relatively easy matter for the Japanese, to expand the fishery from those waters to the vicinity of the Pribilof Islands, 1,300 miles to the northeast (Figure 16).

At the time of its inception, the eastern Bering Sea fishery was not regulated by the Japanese Government and no fishery statistics are available for the first year of its operation. Information on the number of vessels involved and their individual efforts, however, can be

![Figure 16. Distribution of Japanese small fishing effort in the eastern Bering Sea.](image)
Inferred from observations made by National Marine Fisheries Service Enforcement and Surveillance personnel on the eastern Bering Sea fisheries patrols. Correlation between the amount of observed small fishing effort and catch as reported by the Fisheries Agency of Japan in succeeding years is not good. The Japanese catch data are for the entire eastern Bering Sea shelf east of 175°W; no breakdown to more specific areas is available.

In the spring of 1971, United States fisheries patrol units first detected Japanese vessels fishing specifically for snails in the eastern Bering Sea. The 1971 fishery was conducted on the continental shelf, primarily around the Pribilof Islands, and to the northwest towards the central Bering Sea. Fishing was sporadic and occurred from mid-March until early October. Fourteen vessels were identified, and at its peak, the 1971 fishery involved about six vessels fishing simultaneously.

Fishing is probably related to Japanese small fishing activities in the northern Sea of Okhotsk and off east Sakhalin, and at least some of the Bering Sea vessels also fished snails off the Soviet coast.

In 1972, United States fisheries patrols identified only five Japanese small fishing vessels with no more than three of them fishing at one time. Fishing began about mid-May and continued through July. A single boat was again seen fishing in the last two weeks of September. The catch for 1972 was reported as 3,218 metric tons of edible meat (Table 4). Using conversions that apply to 1974 catch statistics, this would amount to about 11,918 metric tons of live snails.

### Table 4. Statistics of the Fisheries Agency of Japan on the eastern Bering Sea small fishery east of 175°W longitude.

<table>
<thead>
<tr>
<th>Year</th>
<th>Type of data</th>
<th>Available statistics</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>Effort</td>
<td>21 licensed vessels</td>
</tr>
<tr>
<td></td>
<td>Vessel size</td>
<td>Not available</td>
</tr>
<tr>
<td></td>
<td>Catch</td>
<td>3,218 MT of recovered edible meat</td>
</tr>
<tr>
<td>1973</td>
<td>Effort</td>
<td>21 licensed vessels</td>
</tr>
<tr>
<td></td>
<td>Vessel size</td>
<td>90-500 gross tons</td>
</tr>
<tr>
<td></td>
<td>Catch</td>
<td>3,319 MT of recovered edible meat</td>
</tr>
<tr>
<td>1974</td>
<td>Effort</td>
<td>21 licensed vessels</td>
</tr>
<tr>
<td></td>
<td>Vessel size</td>
<td>90-500 gross tons</td>
</tr>
<tr>
<td></td>
<td>License period</td>
<td>May 1-December 31</td>
</tr>
<tr>
<td></td>
<td>Catch</td>
<td>13,637 MT live snails</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,574 MT of recovered edible meat</td>
</tr>
<tr>
<td>1975</td>
<td>Effort</td>
<td>Not available</td>
</tr>
<tr>
<td></td>
<td>Vessel size</td>
<td>Not available</td>
</tr>
<tr>
<td></td>
<td>License period</td>
<td>Not available</td>
</tr>
<tr>
<td></td>
<td>Catch</td>
<td>Not available</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,000 MT of recovered edible meat (estimated)</td>
</tr>
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</table>
In 1973, the eastern Bering Sea Japanese snail catch was reported as 3,319 metric tons of recovered edible meat (about 12,293 metric tons of live snails). Four vessels operated from mid-May to late September northwest of the Pribilof Islands (Nagai, 1975a). Only one vessel was observed by NMFS fisheries patrols during 1973 in mid-June on the continental shelf west of the Pribilof Islands. A second vessel, licensed by the Fisheries Agency of Japan to fish for snails in the eastern Bering Sea, was observed to be fishing for snow crab. Judging from catch per vessel day data supplied by Nagai (1975a) for a portion of the 1973 fleet, 12 vessels would have had to fish for 4 months to take the tonnage reportedly caught.

The first snail boats detected by NMFS patrols in 1974 were three boats in July northwest of the Pribilof Islands. These boats were observed through late August when their number increased to five vessels and one factoryship. The 1974 reported catch of 3,574 metric tons of recovered edible meat (about 13,237 metric tons of live snails) is only slightly higher than the catches for the previous 2 years.

In 1975 the discrepancy between the NMFS fisheries patrol observations and reported Japanese snail catches became even more evident. While patrols did not encounter a single small vessel on the eastern Bering Sea shelf, the Japanese reported a catch of about 3,000 metric tons of shucked snail meat from cast of 175°W. Through June 1976, patrols again failed to find a single small vessel, while Japanese sources indicated that 28 vessels were fishing in the eastern Bering Sea around the Pribilof Islands (Pers. Comm., Dr. Hideo Seda, Dept. Fisheries, Nihon Univ., Tokyo, Japan).

The only United States attempt to harvest and market snails on the west coast occurred in 1974 when a Cordova, Alaska, cannery, Saint Elias Ocean Products, secured about 3,000 pounds of Neptunia prabiloifera and Fusitriton oregonensis from snow crab fishermen. The snails were caught incidentally in snow crab fishing operations over a period of about 3 months and were delivered live to the cannery where they were brine frozen in the shell and shipped to Seattle where marketing possibilities were explored. No interest was shown in the product and the cannery dropped the project (Pers. Comm., Jim Poor, St. Elias Ocean Products, Cordova, Alaska).

Vessels and Gear Types Employed

Fishing vessels in the Japanese small fishery range in size from about 96 to 700 gross tons. The vessels are similar to those used in the Japanese sablefish longline fishery. Some vessels in the small fleet operate independently while others fish for a factory vessel which processes the catch from several boats.

The gear used in the fishery consists of pots, fished on a groundline, which are similar in shape to those used in Japan's eastern Bering Sea snow crab fishery. To the groundline attached to the end of each groundline is a buoy, a pole with flag attached, and sometimes a radio beacon.

There has been a considerable amount of experimentation with gear types in terms of number and placement of pots on a groundline.
and length of soak (the time the baited gear remains in the water). NMFS reports of boarding of Japanese snail vessels indicate that some vessels have fished as few as 30 pots on a 2,000 meter groundline, while others have fished as many as 200 pots. Soak times were reported as being from 24 to 48 hours. Nagai (1975a), in reporting on the 1973 commercial fishery, cites the use of four 500-pot groundlines picked every 3 days. A vessel having three such sets of gear picks and resets 6,000 pots in a 3-day period.

The gear is pulled with a standard long-line hauler located forward of the wheelhouse on an open deck. The pots can be stacked by loosening the line that pursues the web across the bottom of the pot. Access for baiting and removing snails is gained through this hole.

Small processing techniques vary somewhat from vessel to vessel. Aboard one vessel boarded by NMFS enforcement and surveillance agents the snails were processed as follows:

The larger snails are fed into a crushing machine that breaks away much of the shell and are then conveyed to a vibrating screen where more of the shell is removed. The remaining meats travel to a cooking basket where the meat is briefly cooked. The snails are removed from the cooker and dumped into a circular stainless steel vat with three agitator vanes that are designed to flush out more of the shell with the help of a constant water stream through a perforated screen near the bottom of the vat. From the vat, the meat is run through a "squirrel cage" washer which removes much of what little shell remains. Finally the meats are placed on a screened table where the remaining shell is picked out by hand. The meats are then placed in standard 12 kg trays and quick frozen. Some grading by meat size is done. Small snails are often frozen whole in the shell aboard ship.

D. Impact on Domestic Fishery

At the present time there is no United States fishery for marine snails in the north Pacific or Bering Sea. The entire commercial catch is taken by the Japanese in the eastern Bering Sea. A fairly large number of snails are taken by foreign vessels in bottom trawls in the eastern Bering Sea, but at least in the Japanese trawl fleets, none of these snails are processed for market. (Pers. Comm., Larry Nelson, NMFS, Seattle, Washington).

Domestic processors have recently shown interest in the possibility of developing a fishery for snails in the eastern Bering Sea. United States crab fishing vessels certainly have the capacity to catch and hold live snails and deliver them to shore-based plants for processing.

Gear conflicts between Japanese snail fishing vessels, which have operated primarily in the waters around the Pribilof Islands and to the northwest along the continental shelf edge, and United States fishing vessels has been negligible.

Relatively little is known about the extent of non-target species mortalities in Japan's eastern Bering Sea snail fishery. National Marine Fisheries Service Enforcement agents, upon boarding Japanese small vessels, sometimes find a few snow (Tanner) crab (Chionoecetes spp.) on deck and hang up in small pot webs (NMFS, Reports of Boarding).
In one study of the Japanese snail fishery (Nagai, 1975b), the animals included in the incidental catch and the percent of pots in which they occurred was as follows: hermit crabs (69.3 percent), brittle stars (13.5 percent), starfish (7.6 percent), toad crab (6.8 percent), and snow crab (2.8 percent). While it appears that the incidental catch of snow crab is quite small, it must be remembered that this study was based on catches from one relatively small area and that incidental catches of snow crab could be significantly higher in other areas.

Regulatory History

In May of 1973, the Fisheries Agency of Japan licensed the operation of 21 vessels for the 1973 eastern Bering Sea snail fishery. This was the first time the Japanese government had moved to regulate the fishery. Applications only for those vessels which had operated in that fishery in 1971-72 were accepted. Vessels licensed to engage in crab and bottom trawl fishing in the eastern Bering Sea were excluded from the list. The authorized area of operations was established as east of 175°W longitude and the open season as March 26 to December 31 (Shin Suisan Shimbun Sokuho, March 30, 1973).

With licensing of the fishery, it became mandatory for small vessels to submit catch reports to the Fisheries Agency at the end of the season (Nagai, 1975a). The catch report includes the daily number of pot haulings and the total daily catch.

To date there are no United States regulations regarding the taking of snails by foreign or domestic fleets on the continental shelf of the United States. Snails are not currently listed in the Continental Shelf Fisheries Resources Listing published in the Federal Register.

No violations of U.S. law have been observed.

History of Cooperative Research and Statistical Exchange

Japan has conducted an eastern Bering Sea snail research program since at least 1973, and the United States began investigating the resource in 1975; no cooperative research has been suggested or attempted.

The statistical data supplied by Japan has been minimal. Included are: (1) the number of vessels licensed to fish for snails in the eastern Bering Sea; (2) the size range (gros tons) of vessels licensed to fish for snails; and (3) the total weight of the annual catch in metric tons of recovered edible meat (Table 4).

Three scientific papers published by Japan since 1974 on the eastern Bering Sea snail fishery have, however, added to the previously scant literature.

Status of Stocks

NMFS has conducted resource assessment surveys for marine gastropods in 1975 and 1976. As can be seen in Figure 1, Neptunia princeps occurs in a band along the edge of the continental shelf from the vicinity of Unimak Pass, to and probably beyond 62°N latitude. The entire range of the species is known to extend from the eastern Bering Sea south to British Columbia. Buccinum undatum and Buccinum undatum, the two other important components of the Japanese catch,
are also found to be more abundant nearer the edge of the continental shelf (Figures 7 and 6). Three additional species occurring in large numbers in the eastern Bering Sea are Neptunea lyrata (Figure 3), Neptunea heros (Figure 2), and Neptunea ventricosa (Figure 4).

Nagai (1975a) has studied variations in catch per unit effort in the Japanese snail fishery and their relationship to stock abundance. Nagai's values for small catch per pot, catch per string of gear, etc., will be of value in assessing the condition of snail stocks when data for additional years are available and yearly comparisons can be made.

Lack of data on most population parameters prevents estimating TST for snails in the eastern Bering Sea.

Total Allowable Catch and Foreign Allocation

Since neither MSY (maximum sustainable yield) nor status of stock information are available, the total allowable catch for 1977 will be fixed at the 1975 catch level—3,000 metric tons of edible meat. Since no U.S. fishery has yet occurred, all of the total allowable catch is available for allocation to foreign fisheries.

Conservation and Management Measures Applicable to Foreign Fishery

Regulations

No restrictions other than catch allocation apply to the 1977 fishery.

Statistical Reports

Each nation whose fishermen operate in the Region shall report to the Regional Director, NMFS, Juneau, Alaska, by May 30 of the following year, annual catch and effort statistics as follows:

- Effort in pots hauled, by month, by ° (Lat) x ° (Long) statistical area; catch in metric tons of recovered edible meat, by month, by ° (Lat) x ° (Long) statistical area.

In addition to the annual statistical report in the paragraph above, each nation will submit monthly reports within 30 days of the end of the month in which the fishing occurred containing provisional fishing information as follows: effort in vessel-days on the grounds; and catch in metric tons of recovered edible meat.

Statistical Disposition Reports

The appropriate fleet commander or individual vessel master will report to the Regional Director, NMFS, Juneau, Alaska, by radio prior to the commencement of fishing, the arrival in the Region of each fishing and processing vessel, giving the vessel's name and other identifying marks, size, and intended target species. A similar report will be made at the time of departure of each vessel from the Region. These reports, augmented with U.S. surveillance observations and monthly catch and effort reports, will be used to monitor adherence to limitations.

Observer

All vessels of each nation operating in the Region will have available at no cost to the U.S. accommodation for one U.S. observer. Observers will be assigned to individual vessels and for periods at the discretion of the U.S. to measure daily catch rates; estimate species, size and age composition; collect other biological data as appropriate; determine location and duration of hauls; and observe gear dimensions and performance.
Bona fide fishery or fishery-related research (but not exploratory fishing) by foreign governments will be encouraged. Valid results of such research will be considered by the United States management entity in determining total allowable catches and other management measures. Cooperative U.S.-foreign research ventures will be planned and executed when they are found to be in the best regional interest of the U.S.


APPENDIX

Summary

Conditions and Restrictions

Subpart D - Snails

1.0 Definitions

(a) Unless otherwise defined herein, the terms used in this subpart will have the meanings ascribed to them.

(b) Conditions and restrictions in this subpart will apply to all species of snails taken by the fishery.

(c) Regulatory area for taking snails by foreign fishing vessels is only that portion of the Bering Sea over which the United States exercises fishery jurisdiction.

2.0 Area quota

The 1977 annual catch quota for all species of snails contained in the Bering Sea shall not exceed 3,000 metric tons of edible meat.

3.0 Open season

The open season for taking snails by foreign fishing vessels in the Bering Sea shall begin at 0001 hours on March 1, 1977, and terminate at a time and date to be announced.

4.0 Closed season and areas

There are no closed seasons or areas within the regulatory area.

5.0 Gear restrictions

There are no gear restrictions.

6.0 Statistical reporting

(a) Annual—Each country whose fishermen operate in the Region shall report to the Regional Director, NMFS, Juneau, Alaska, by May 31 of the following year, annual catch and effort statistics as follows: Effort in vessels hauled, by month, by \(9^\circ\) (lat) x \(1^\circ\) (long) statistical area; Catch in metric tons of recovered edible meat, by month, by \(9^\circ\) (lat) x \(1^\circ\) (long) statistical area.

(b) Monthly—In addition to the annual statistical report in paragraph (a) above, each nation will submit monthly reports within 30 days of the end of the month in which the fishing occurred containing provisional fishery information as follows: Effort in vessel-days on the grounds; and Catch in metric tons of recovered edible meat.
OFFICE OF MANAGEMENT AND BUDGET

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS FEBRUARY 1977

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all current year budget authority with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of February 1, 1977, of the 13 rescissions and 52 deferrals contained in the first seven special messages transmitted to the Congress for fiscal year 1977. These messages were transmitted to the Congress on July 29, September 22, October 1, November 5, December 3, 1976, and January 7, and 17, 1977.

RESCISIONS (Table A and Attachment A)

Eleven rescissions totaling $1,055.4 million in FY 1977 budget authority are presently pending before the Congress. Table A summarizes the status of rescissions proposed as of February 1, 1977. Attachment A shows the history and status of each rescission proposed for fiscal year 1977.

DEFERRALS (Table B and Attachment B)

As of February 1, 1977, $4,505.7 million in 1977 budget authority was being deferred from obligation and another $59.5 million in 1977 obligations was being deferred from expenditure. Table B summarizes the status of existing deferrals. Attachment B shows the history and status of each deferral proposed during fiscal year 1977.

INFORMATION FROM SPECIAL MESSAGES

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the Federal Register of:

- Tuesday, August 3, 1976 (Vol. 41, No. 150, Part VI).
- Thursday, October 7, 1976 (Vol. 41, No. 196, Part IV).
- Wednesday, December 8, 1976 (Vol. 41, No. 237, Part II).

BERT LANCE,
Director.
### TABLE A

<table>
<thead>
<tr>
<th>Status Description</th>
<th>Amount (In millions of dollars)</th>
</tr>
</thead>
<tbody>
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<td>Proposed rescissions</td>
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<tr>
<td>Withdrew (R77-4A, Special Message No. 4)</td>
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</tr>
<tr>
<td>Accepted by the Congress</td>
<td>-45.0</td>
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<tr>
<td>Rejected by the Congress</td>
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<tr>
<td>Pending before the Congress</td>
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<td>Special Message No. 2, less R77-4 withdrawn in Special Message No. 4 by R77-4A</td>
<td>(54.1)</td>
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<td>(transmitted September 22, 1976)</td>
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<td>Special Message No. 7 (transmitted January 17, 1977)</td>
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### TABLE B

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<th>Status Description</th>
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<td>Proposed deferrals</td>
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<td>Routine Executive releases (-1,987.0M) and adjustments (-496.0M) 1/ through</td>
<td>-2,483.0</td>
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<td>Overturned by the Congress</td>
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<tr>
<td>Currently before the Congress</td>
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</tr>
</tbody>
</table>

1/ An amount equal to $756.0 million included in the "Adjustments" column of       |
   Attachment B to this report represents superseded deferrals. This amount is not   |
   included in the "adjustments" entry above because superseded deferrals are netted   |
   out in calculating the amount shown on the line "Deferrals proposed by the       |
   President" to avoid double counting.                                              |

2/ Includes $59.5 million of outlays in two Treasury deferrals—D77-26 and D77-27A.
<table>
<thead>
<tr>
<th>Agency/Bureau/Account</th>
<th>Rescission Number</th>
<th>Amount Proposed For Rescission</th>
<th>Date Special Message Transmitted to Congress</th>
<th>Amount Rescinded</th>
<th>Date Rescission Act Signed</th>
<th>Amount Made Available</th>
<th>Date Made Available</th>
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<td>National Oceanic and Atmospheric Administration: Operations, research, and facilities</td>
<td>R77-7</td>
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<td>Shipbuilding and conversion, Navy</td>
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<td>Amount Recinded Act Signed</td>
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<td>09-22-76</td>
<td>35,000</td>
<td>3/</td>
<td>10-01-76</td>
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<tr>
<td>77-4A</td>
<td>0</td>
<td>11-05-76</td>
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<tr>
<td>Coast Guard: Retired pay</td>
<td>77-12</td>
<td>6,803</td>
<td>01-17-77</td>
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<tr>
<td>Other Independent Agencies</td>
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<tr>
<td>Legal Services Corporation:</td>
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<tr>
<td>Payment to the Legal Services Corporation</td>
<td>77-1</td>
<td>45,000</td>
<td>07-29-76</td>
<td>45,000</td>
<td>10-01-76</td>
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<td>Small Business Administration Business loan and investment fund</td>
<td>77-13</td>
<td>60,000</td>
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<td>TOTAL</td>
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<td></td>
<td>1,055,378</td>
<td>80,000</td>
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</tr>
</tbody>
</table>

1/ This amount was included in a deferral (D77-38) that was transmitted to the Congress on 12-03-76.
2/ Of this amount, $452,600,000 was assumed to be included in a deferral of $929,250,000 (D77-34) transmitted to the Congress on 11-05-76. Shipbuilding funds are available for obligation for five years. It was estimated that 15% of the 1977 appropriation would be obligated after 1977.
3/ A supplementary report withdrawing the proposed rescission was transmitted to the Congress on November 5, 1976.
4/ These funds were not withheld during the 45-day Congressional consideration period.
### Status of Deferrals

**Fiscal Year 1977**

(Amounts in thousands of dollars)

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Date of Action</th>
<th>Releases Resulting From Subsequent Actions Taken by</th>
<th>Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>Current</td>
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<td>OMB/Agency House Senate</td>
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<td><strong>Emergency Refugee and Migration Assistance Fund</strong></td>
<td>D77-1</td>
<td>8,640</td>
<td>10-01-76</td>
<td>-1,000</td>
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<td>10-28-76</td>
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<td>12-12-76</td>
<td>-2,000</td>
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<td></td>
<td>01-10-77</td>
<td>-1,000</td>
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<td>01-31-77</td>
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<td>D77-37</td>
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<td>12-03-76</td>
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<td><strong>International Security Assistance</strong></td>
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<td>740,000</td>
<td>12-03-76</td>
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<td>-41,500 1/</td>
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<td>01-10-77</td>
<td>-595,533</td>
<td>89,340</td>
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<td>01-25-77</td>
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<td>-41,500</td>
<td>163,680</td>
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</table>

1/ This amount is included in a rescission proposal (R77-5) transmitted to the Congress on 01-17-77.
### STATUTORY OF DEFERRALS

**Agency:** Department of Agriculture  
**Fiscal Year:** 1977  
**Amounts in thousands of dollars**

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Superseded</th>
<th>Current</th>
<th>Date of Action</th>
<th>Adjustments</th>
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</thead>
<tbody>
<tr>
<td>Foreign Agricultural Service</td>
<td>D77-2</td>
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<td>01-12-77</td>
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<td>-1,610</td>
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<td></td>
<td>D77-2A</td>
<td>1,743</td>
<td>01-17-77</td>
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<tr>
<td>Agricultural Stabilization and Conservation Service</td>
<td>D77-3</td>
<td>2,919</td>
<td>10-01-76</td>
<td>12-30-76</td>
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<td></td>
<td>D77-4</td>
<td>22,321</td>
<td>10-01-76</td>
<td>01-17-77</td>
<td>-146</td>
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<td>D77-5</td>
<td>146</td>
<td>10-01-76</td>
<td>01-17-77</td>
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<td><strong>Total</strong></td>
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<td>27,222</td>
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<td>-1,756</td>
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</table>

1/ Subsequently incorporated in a supplementary report.

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FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977
| Agency: Department of Commerce | Bureau/Account | General Administration Special foreign currency program National Oceanic and Atmospheric Administration Operations, research, and facilities National Oceanic and Atmospheric Administration Special foreign currency program Fisheries loan fund Offshore shrimp fisheries fund Fishermen's guaranty fund Maritime Administration Ship construction |
|---|---|---|---|---|---|---|---|
| Deferral Number | D77-45 | D77-46 | D77-46A | D77-47 | D77-5A | D77-5A | D77-5A |
| Amount Transmitted in Special Message | 654 | 7,500 | 1,772 | 5,799 | 544 | 2,127 | 200,900 |
| Date of Action | 01-17-77 | 01-17-77 | 01-17-77 | 01-17-77 | 01-07-77 | 01-07-77 | 01-07-77 |
| Amount Deferred as of 02-01-77 | 654 | 7,500 | 1,772 | 5,799 | 544 | 2,127 | 200,900 |

1/ Subsequently incorporated in a supplementary report.
### Status of Deferrals

**Fiscal Year 1977**  
(Amounts in thousands of dollars)

**Agency:** Department of Defense, Military

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Date of Action</th>
<th>Superseded Current</th>
<th>Date of Action</th>
<th>Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shipbuilding and conversion, Navy</td>
<td>D77-34</td>
<td>929,250</td>
<td>11-04-76</td>
<td>11-04-76</td>
<td>01-17-77</td>
<td>-452,603</td>
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<td>Military Construction, all services</td>
<td>D77-10</td>
<td>[76,483]</td>
<td>10-01-76</td>
<td>12-03-76</td>
<td>-76,483</td>
<td>335,883</td>
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<td>D77-10B</td>
<td>387,652</td>
<td>01-17-77</td>
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<td><strong>Total</strong></td>
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<td>412,366</td>
<td>1,316,902</td>
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<td>-864,966</td>
<td>864,302</td>
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</tbody>
</table>

1/ This amount is included in a rescission proposal (R77-9) transmitted to the Congress on 01-17-77.

2/ Subsequently incorporated in a supplementary report.
## Status of Deferrals

**Fiscal Year 1977**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Capital Outlay</th>
<th>Defense</th>
<th>Miscellaneous Accounts</th>
<th>Federal Reserve</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Panama Canal Government</td>
<td>D77-11</td>
<td>146</td>
<td>10-03-76</td>
<td>146</td>
<td>363</td>
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<td>509</td>
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</tbody>
</table>

(Amounts in thousands of dollars)

Releases Resulting From OMB/Agency House Senate Adjustments

<table>
<thead>
<tr>
<th>Deferral Number</th>
<th>Date of Action</th>
<th>Amount Transmitted in Special Message</th>
<th>Amount Superseded</th>
</tr>
</thead>
<tbody>
<tr>
<td>D77-11</td>
<td>02-01-77</td>
<td>146</td>
<td>10-03-76</td>
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</tbody>
</table>

Note: The table above outlines the status of deferrals for the Department of Defense, Civil, for Fiscal Year 1977. The amounts are in thousands of dollars as of 02-01-77.
<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Number</th>
<th>Amount Transmitted</th>
<th>Amount Deferral as of 02-01-77</th>
<th>Date of Superseded Current Action</th>
<th>Date of Subsequent Action Taken by the House</th>
<th>Date of Subsequent Action Taken by the Senate</th>
<th>Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the Assistant Secretary for Health and Scientific Activities, Operation Overseas (Special Foreign Current Program)</td>
<td>D77-11</td>
<td>10,059</td>
<td>2,413</td>
<td>01-01-77</td>
<td>10-01-76</td>
<td>10-01-77</td>
<td>2,113</td>
</tr>
<tr>
<td>Office of Education</td>
<td>D77-14</td>
<td>111,702</td>
<td>1,313</td>
<td>01-01-77</td>
<td>10-01-76</td>
<td>10-01-76</td>
<td>3,113</td>
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<tr>
<td>Special Security Administration</td>
<td>D77-15</td>
<td>17,721</td>
<td>2,311</td>
<td>01-01-77</td>
<td>10-01-76</td>
<td>10-01-76</td>
<td>5,311</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>D77-15A</td>
<td>8,697</td>
<td>1,113</td>
<td>11-05-76</td>
<td>11-05-76</td>
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<td>2,113</td>
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<tr>
<td>Special Colleges and Universities</td>
<td>D77-35A</td>
<td>18,673</td>
<td>2,413</td>
<td>11-05-76</td>
<td>11-05-76</td>
<td>11-05-76</td>
<td>4,413</td>
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</tbody>
</table>

1/ Subsequently incorporated in a supplementary report.
<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Date of Action</th>
<th>Releases Resulting From Subsequent Actions Taken by</th>
<th>Amount Deferred as of 02-01-77</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureau of Land Management</td>
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<tr>
<td>Oregon and California grant lands</td>
<td>D77-16</td>
<td>5,426</td>
<td>10-01-76</td>
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<td>5,426</td>
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<tr>
<td>Bureau of Outdoor Reclamation</td>
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<tr>
<td>Land and water conservation fund</td>
<td>D77-17</td>
<td>30,000</td>
<td>10-01-76</td>
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<td>30,000</td>
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<td>National Park Service</td>
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</tr>
<tr>
<td>Road construction</td>
<td>D77-18</td>
<td>3,245</td>
<td>10-01-76</td>
<td>10-01-76 -3,245</td>
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<tr>
<td>Geological Survey</td>
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<tr>
<td>Payment from proceeds, sale of water</td>
<td>D77-19</td>
<td>30</td>
<td>10-01-76</td>
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<td>30</td>
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<td>Bureau of Mines</td>
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</tr>
<tr>
<td>Drainage of anthracite mines</td>
<td>D77-20</td>
<td>3,525</td>
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<td>3,525</td>
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<td><strong>-3,245</strong></td>
<td><strong>38,981</strong></td>
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</table>
Agency: Department of Justice

Federal Prison System: Buildings and Facilities D7-21

Amount Transmitted: 1,900

Bureau/Account: 10-01-76

Deferral: 1,900

Superseded Current Action: 1,900

Deferral in Special Message: 1,900

Releases Resulting From Adjustments: 1,900

This deferral resulted from anticipated savings attributable to a plan for leasing a New York State correctional facility. The lease proposal on which the deferral was based was modified. Funds related to this deferral were not withheld.
## Status of Deferrals

**Agency:** Department of Labor

FISCAL YEAR 1977

(Amounts in thousands of dollars)

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Superseded</th>
<th>Current</th>
<th>Date of Current Action</th>
<th>releases Resulting From</th>
<th>OMB/Agency</th>
<th>House</th>
<th>Senate</th>
<th>Adjustments as of 02-01-77</th>
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</thead>
<tbody>
<tr>
<td>Employment and Training Administration</td>
<td>D77-39</td>
<td>2,919,000</td>
<td>12-01-76</td>
<td>12-28-77</td>
<td>-1,119,000</td>
<td>1,800,000</td>
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<tr>
<td>Bureau/Account</td>
<td>Deferral Number</td>
<td>Amount Transmitted in Special Message</td>
<td>Date of Action</td>
<td>Releases Resulting From Subsequent Actions Taken by OMB/Agency</td>
<td>House</td>
<td>Senate</td>
<td>Adjustments</td>
<td>Amount Deferred as of 02-01-77</td>
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<td>Administration of Foreign Affairs</td>
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<td>Bureau/Account</td>
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<td>Deferral in Special Message</td>
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<td>Current Action</td>
<td>Releases Resulting From Subsequent Actions Taken by OMB/Agency House Senate Adjustments</td>
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<td>Coast Guard</td>
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<td>Civil Supersonic Aircraft</td>
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<tr>
<td>Facilities and equipment</td>
<td>287,095</td>
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<td>287,095</td>
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<tr>
<td>(Airport and airway trust fund)</td>
<td>276,101</td>
<td>01-17-77</td>
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<td>276,101</td>
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<td>Federal Highway Administration</td>
<td>31,250</td>
<td>01-17-77</td>
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Subsequently incorporated in a supplementary report.
## Status of Deferrals

**Agency:** Department of the Treasury  
**Fiscal Year:** 1977  
(amounts in thousands of dollars)

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted</th>
<th>Deferral in Special Message</th>
<th>Date of Superseded Current</th>
<th>Date of Action</th>
<th>Releases Resulting From Subsequent Actions Taken by OMB/Agency</th>
<th>Adjustments as of 02-01-77</th>
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</thead>
<tbody>
<tr>
<td><strong>Office of the Secretary</strong></td>
<td></td>
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<tr>
<td>State and local government fiscal assistance trust fund</td>
<td>D77-26</td>
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<td>01-31-77</td>
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<td>-28,433</td>
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</tr>
<tr>
<td>State and local government fiscal assistance trust fund</td>
<td>D77-27</td>
<td>(10,000)</td>
<td>1/</td>
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<td>12-03-76</td>
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<td>01-31-77</td>
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<td>State and local government fiscal assistance trust fund</td>
<td>D77-28</td>
<td>81,500</td>
<td>10-01-76</td>
<td>11-01-76</td>
<td>12-01-76</td>
<td>12-31-76</td>
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<td>Loans to the District of Columbia for capital outlay</td>
<td>D77-36</td>
<td>51,002</td>
<td>11-05-76</td>
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<td>59,458</td>
</tr>
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</table>

1/ Outlays only.  
2/ Subsequently incorporated in a supplementary report.
# Status of Referrals

**Fiscal Year 1977**

(Amounts in thousands of dollars)

**Agency:** Energy Research and Development Administration

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Date of Deferral</th>
<th>Deferral in Special Message as of 02-01-77</th>
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</thead>
<tbody>
<tr>
<td>Operating expenses (Energy extension service)</td>
<td>D77-49</td>
<td>7,500</td>
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<td>Operating expenses (Magnetic fusion energy)</td>
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<td>Operating expenses (Program support-community operations)</td>
<td>D77-51</td>
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<td>Operating expenses (Biomedical and environmental research)</td>
<td>D77-52</td>
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**FEDERAL REGISTER, VOL. 42, NO. 31—TUESDAY, FEBRUARY 15, 1977**
### STATUS OF DEFERRALS

**FISCAL YEAR 1977**  
(Amounts in thousands of dollars)

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted in Special Message</th>
<th>Date of Action</th>
<th>Releases Resulting From Subsequent Actions Taken by OMB/Agency</th>
<th>House</th>
<th>Senate</th>
<th>Adjustments</th>
<th>Amount Deferred as of 02-01-77</th>
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<tr>
<td>Rare Silver Dollar Program</td>
<td>D77-29</td>
<td>[1,709]</td>
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<td><strong>TOTAL</strong></td>
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<td></td>
<td>-1,709</td>
<td>1,797</td>
</tr>
</tbody>
</table>

1/ Subsequently incorporated in a supplementary report.
## STATUS OF DEFERRALS

**FY 1977**

(Amounts in thousands of dollars)

<table>
<thead>
<tr>
<th>Bureau/Account</th>
<th>Deferral Number</th>
<th>Amount Transmitted</th>
<th>Date of Action</th>
<th>Releases Resulting From Subsequent Actions Taken by OMB/Agency</th>
<th>Adjustments</th>
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<tbody>
<tr>
<td><strong>Operating expenses, international and domestic programs</strong></td>
<td>D77-40</td>
<td>550</td>
<td>12-03-76</td>
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<td><strong>Foreign Claims Settlement Commission</strong></td>
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<td><strong>National Commission on the Observance of International Women's Year</strong></td>
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<td><strong>Salaries and expenses</strong></td>
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<td><strong>Special international exhibitions</strong></td>
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<td><strong>Special international exhibitions (special foreign currency program)</strong></td>
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<td>Date of Action</td>
<td>Bureau/Agency or Committee Receiving Adjustments</td>
<td>Releases Subsequently Resulting From Actions Taken by House Senate Adjustments</td>
<td>OMB Approval Date of Actions Taken by House Senate Adjustments</td>
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Subsequently incorporated in a supplementary report.
### Privacy Act Issuances, 1976 Compilation

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<tr>
<td>Volume II (contains Department of Defense systems of records, Part 2 and rules; and Department of Transportation systems of records and rules)</td>
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<tr>
<td><strong>Total Order</strong></td>
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</tbody>
</table>

**Mail Order Form**


Enclosed find $__________ (check, money order, or Supt. of Documents coupons) or charge to my Deposit Account No. _________. Please send me __________ copies of:

**Please fill in mailing label below**

Name ____________________________________________
Street address _____________________________________
City and State ______________________________ ZIP Code __________

For prompt shipment, please print or type address on label below, including your ZIP code

**For Use of Supt. Docs.**

- Enclosed...
- To be mailed later...
- Subscription...
- Refund...
- Coupon refund...
- Postage...
- Foreign Handling...

U.S. Government Printing Office
Assistant Public Printer
(Superintendent of Documents)
Washington, D.C. 20402

Official Business

Name ____________________________________________
Street address _____________________________________
City and State ______________________________ ZIP Code __________

For prompt shipment, please print or type address on label below, including your ZIP code

U.S. Government Printing Office
Assistant Public Printer
(Superintendent of Documents)
Washington, D.C. 20402

Official Business

Name ____________________________________________
Street address _____________________________________
City and State ______________________________ ZIP Code __________