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federal register

TUESDAY, JUNE 14, 1977



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

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

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

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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

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Title 3—The President

PROCLAMATION 4507

Black Press Day, 1977

By the President of the United States of America

A Proclamation

The Nation's first black newspaper was founded in 1827. In the 150 years since, the black press has come to serve more than 25,000,000 Americans, and has been a major factor in their advancement.

The black press has had to overcome great obstacles to achieve the respect it commands today as a voice for individual freedom, dignity, and equality.

That it has done so, while remaining faithful to the standards of professional journalism, is a tribute to the dedication, responsibility and zeal of its members.

As we go forward with our efforts to make equality of opportunity a reality for all Americans, we will continue to depend on the black press to provide us with guidance, insight and wisdom.

I urge every American to support the continuing efforts of the black press to help assure that America achieves its full potential.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim Friday, June 17, 1977, as Black Press Day. I urge all Americans to reflect upon the contributions of the black press to the realization of the principles upon which our Nation was founded.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June 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.

Jimmy Carter

[FR Doc.77-17108 Filed 6-13-77;11:34 am]

PROCLAMATION 4508

Flag Day and National Flag Week, 1977

By the President of the United States of America

A Proclamation

Two hundred years ago, on June 14, 1777, the Continental Congress adopted the Stars and Stripes as the official flag of the United States.

In these two centuries our Nation has changed in many ways, but our flag remains an appropriate symbol of America. Its bold colors reflect the courage and determination of the American people, as its straight and simple lines reflect their straightforward character.

In celebrating this two hundredth anniversary let us resolve to honor our country's flag by displaying in our lives the qualities it reflects.

To commemorate the adoption of our Nation's flag, the Congress, by joint resolution of August 3, 1949 (63 Stat. 492, 36 U.S.C. 157), has requested the President to issue annually a proclamation calling for its appropriate observance. By joint resolution of June 9, 1966 (80 Stat. 194, 36 U.S.C. 157a), the Congress also requested the President to issue annually a proclamation designating the week which includes June 14 as National Flag Week.

To encourage the American people to take pride in the Nation which that flag symbolizes, the Congress, by joint resolution of June 13, 1975 (89 Stat. 211, 36 U.S.C. 157b), has declared the twenty-one days from Flag Day through Independence Day as a period to honor America.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week beginning June 12, 1977, as National Flag Week and I call upon the appropriate officials of the Government to display the flag on all Government buildings during that week. I urge the American people to celebrate Flag Day and National Flag Week by displaying the flag of the United States at their homes and other suitable places.

I also call upon all Americans to observe the period from Flag Day through Independence Day as a period to honor America through public gatherings and other suitable activities that will demonstrate their pride in their Nation and its accomplishments.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June 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.

Jimmy Carter

[FR Doc.77-17107 Filed 6-13-77;11:33 am]

rules and regulations

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

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

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Justice

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule A, 300 intermittent positions of guard in the U.S. Marshals Service because examination is not practicable for these positions.

EFFECTIVE DATE: June 14, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, (202–632–4533).

Accordingly, 5 CFR 213.3110(d) is added as follows:

§ 213.3110 **Department of Justice.**

* * * * *

(d) *U.S. Marshals Service.*

(1) Three hundred intermittent positions of guard for employment not to exceed 1040 hours a year.

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

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

[FR Doc.77–16851 Filed 6–13–77;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Treasury

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C one position of Director, Office of International Development Banks, Office of the Assistant Secretary (International Affairs), Office of the Deputy Assistant Secretary (Developing Nations Finance) Department of the Treasury, because the position is confidential in nature.

EFFECTIVE DATE: June 14, 1977.

FOR FURTHER INFORMATION ON POSITION AUTHORITY CONTACT:

Henry A. Ulrich, Civil Service Commission (202–632–3782).

FOR FURTHER INFORMATION ON POSITION CONTENT CONTACT:

Mrs. Doris Smith, Department of the Treasury (202–566–5521).

Accordingly, 5 CFR 213.3305(a)(70) is added as set out below:

§ 213.3305 **Department of the Treasury.**

(a) *Office of the Secretary.* * * *

(70) Director, Office of International Development Banks, Office of the Deputy Assistant Secretary (Developing Nations Finance).

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

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

[FR Doc.77–16848 Filed 6–13–77;8:45 am]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Mountain Plains Regional Office; New Administrative Boundaries, Address of New Office; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared on page 15053 in the FEDERAL REGISTER of Friday, March 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert C. Peake, Chief, Management Analysis Branch, Management Services Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–8494).

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7847 appearing on Page 15053 in the FEDERAL REGISTER of March 18, 1977 the designation "(Amdt. 25)" is changed to "(Amdt. 26)".

Dated: June 1, 1977.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[FR Doc.77–16952 Filed 6–13–77;8:45 am]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 730—RICE

Subpart—1977 Crop Rice Marketing Quota and Acreage Allotment

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This action is being taken to determine and proclaim a national rice acreage allotment; apportion the national rice acreage allotment to farms and producers in their respective administrative areas; establish the rice allotment for the farm (or in producer administrative areas, the producer allotments allocated to the farm) which will be used to determine loan eligibility and to compute deficiency and/or disaster payments if necessary. The need for this rule is to satisfy the statutory requirements as provided for in Section 352 of the Agricultural Adjustment Act of 1938 as amended by the Rice Production Act of 1975 (Pub. L. 94–214, 90 Stat. 181).

DATES: This determination shall be effective for the 1977 crop of rice.

FOR FURTHER INFORMATION CONTACT:

George H. Schaefer (ASCS) (202–447–6611), P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: The need for this rule is to satisfy the statutory requirement as provided for in Section 352 of the Agricultural Adjustment Act of 1938, as amended (referred to as the "Act"). Since planting of the 1977 crop of rice is well underway, it is of the utmost importance that farmers be notified of their 1977 producer and farm rice acreage allotments as soon as possible. Therefore, it is determined that compliance with the notice, public rulemaking and effective date requirements of 5 U.S.C. 553 is impracticable and contrary to the public interest.

It is hereby determined that the national acreage allotment for the 1977 crop of rice shall be 1,800,000 acres.

RULE

Accordingly, 7 CFR 730.1501 to 730.1505 and the title of the subpart are hereby amended with respect to the 1977 crop of rice to read as follows:

Subpart—1977 Crop Rice Marketing Quota and Acreage Allotment

§ 730.1501 [Removed]

§ 730.1502 National acreage allotment for the 1977 crop of rice.

It is hereby determined and proclaimed that a national acreage allotment of 1,800,000 acres shall be in effect for the 1977 crop of rice.

§ 730.1503 Apportionment of the 1977 national acreage allotment of rice to farms and producers.

The national acreage allotment of 1,800,000 acres for the 1977 crop of rice is apportioned to farms and producers on the basis of the rice allotments established for the 1975 crop of rice. The allotment so apportioned within each of the several rice producing States is as follows:

State:	*Acres*
Arizona	2.4
Arkansas	434,785.0
California	326,428.7
Florida	990.5
Louisiana:	
Farm administrative area	499,326.7
Producer administrative area	18,476.5
State total	517,803.2
Mississippi	50,843.6
Missouri	5,101.5
North Carolina	41.0
Oklahoma	163.0
South Carolina	3,009.6
Tennessee	563.1
Texas	460,268.4
U.S. total	1,800,000.0

§ 730.1504 State reserve acreages.

The State reserve acreages set forth in the table in this section were established by the State committees in accordance with Section 353 of the Act, as amended.

State:	*Reserve* [1]
Arizona	----
Arkansas	----
California	50
Florida	10
Louisiana:	
Farm administrative area	100
Producer administrative area	----
Mississippi	100
Missouri	----
North Carolina	----
Oklahoma	----
South Carolina	----
Tennessee	----
Texas	50

[1] State reserve for new growers, corrections and adjustments.

§ 730.1505 [Removed]

(Secs. 301, 352, 353, 354, 375, 52 Stat. 38, 60, 61, 66 as amended, (7 U.S.C. 1301, 1352, 1353, 1354, 1375).)

NOTE.—The Agricultural Stabilization and Conservation 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.

Signed at Washington, D.C., on June 3, 1977.

BOB BERGLAND,
Secretary.

[FR Doc.77-16774 Filed 6-13-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

SUBCHAPTER A—GENERAL RULES

[Docket No. RM76-24]

PART 1—RULES OF PRACTICE AND PROCEDURE

Petition of Certain Utilities and Others for Amendment of 18 CFR 1.4(d) to Facilitate Settlement or Disposition of Particular Issues in Proceedings Before the Commission

AGENCY: Federal Power Commission.

ACTION: Order terminating proceeding.

SUMMARY: This order terminates a rulemaking proceeding requested by certain utilities and others in order to amend the Federal Power Commission's then existing ex parte rule. The termination is made due to a March 11, 1977, Commission order, published March 16, 1977 (42 FR 14697), amending the ex parte rule in light of § 4 of the Government in the Sunshine Act, Pub. L. No. 94-409; the ex parte rule, as amended, incorporates the substantive provisions contained in the petition initiating this proceeding.

EFFECTIVE DATE: June 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Romulo L. Diaz, Jr., Office of General Counsel (202—275-4866).

ORDER TERMINATING PROCEEDING

MAY 27, 1977.

The Commission, by notice issued July 19, 1976, 41 FR 30688 (1976), stated that it had been requested by certain utilities and others [1] to initiate a rulemaking proceeding to amend § 1.4(d) of its rules of practice and procedure, 18 CFR 1.4(d) (1976), by adding three exceptions to the ex parte rule then in existence. The three requested exceptions were to allow discussions between staff counsel and counsel to any party or parties to the proceeding, to allow discussion between certain designated persons for the purpose of discussing possible settlement, and to allow discussions which all parties agreed might be made on an ex parte basis. Comments were received from a number of interested parties.[2]

On November 15, 1976, the Commission issued a notice, 41 FR 52303 (1976), that the Commission proposed, among other things, to revise and clarify its ex parte rule in light of section 4 of the Government in the Sunshine Act, Pub. L. No. 94-409. On March 11, 1977, the Commission issued Order No. 562, 42 Fed. Reg. 14,697 (1977), amending, among other things, the then existing ex parte rule. The ex parte rule, as amended, incorporates the substantive provisions contained in the petition initiating this proceeding. The instant proceeding should, accordingly, be terminated.

The Commission finds: (1) The termination of the proceeding in Docket No. RM76-24 is appropriate and necessary under the provisions of the Federal Power Act and the Natural Gas Act.

(2) Compliance with the effective date provisions of section 553 of Title 5 of the United States Code in unnecessary.

The Commission, acting pursuant to authority granted by the Federal Power Act, as amended, particularly 308 and 309 (49 Stat. 858, 859; 16 U.S.C. 825g, 825h) and the provisions of the Natural Gas Act, as amended, particularly Sections 15 and 16 (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), orders:

(A) Effective upon issuance of this order, the proceeding in Docket No. RM 76-24 is terminated.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A

Petitioners in Docket No. RM76-24: Frederick T. Searls, Howard C. Anderson, Debevoise & Liberman, 700 Shoreham Building, 806 15th Street, N.W., Washington, D.C. 20005; and William G. Porter, Jr., Porter, Stanley, Platt & Arthur, 37 West Broad Street, Columbus, Ohio 43215.

On behalf of: Alabama Power Company; Appalachian Power Company; Baltimore Gas & Electric Company; Columbus & Southern Ohio Electric Company; Commonwealth Edison Company; Connecticut Light & Power Company; Duke Power Company; Hartford Electric Light Company; Holyoke Water Power Company; Indiana & Michigan Electric Company; Jersey Central Power & Light Company; Kansas City Power & Light Company; Kentucky Power Company; Kingsport Power Company; Metropolitan Edison Company; Michigan Power Company; Mississippi Power Company; New England Power Company; Northeast Utilities Service Company; Ohio Power Company; Pacific Gas & Electric Company; Pennsylvania Electric Company; Pennsylvania Power & Light Company; Public Service Company of Indiana; South Carolina Electric & Gas Company; Union Electric Company; Virginia Electric & Power Company; Western Massachusetts Electric Company; Wheeling Electric Company; Wisconsin Electric Power Company; and Wisconsin Power & Light Company.

Raymond N. Shibley, Farmer, Shibley, McGuinn & Flood, Suite 850, 1120 Connecticut Avenue, N.W.

On behalf of: Detroit Edison Company; Panhandle Eastern Pipe Line Company; and Trunkline Gas Company.

James N. Horwood, Spiegel & McDiarmid, 312 Watergate Office Building, 2600 Virginia Avenue, N.W., Washington, D.C. 20037—Law firm which represents Municipal Electric Systems and Rural Electric Systems and Rural Electric Cooperatives in twenty-three states.

ATTACHMENT B

William C. Wise, Suite 200, 1019 19th Street, N.W., Washington, D.C. 20036—Attorney for a large number of Rural Electric Cooperatives and Municipal Electric Systems.

Respondents in Docket No. RM76-24: American Bar Association; Cities of Adrian, Minnesota, Et al.; Columbia Gas of Kentucky, Inc., Et al.; Consumers Power Company; The Dayton Power and Light Company; Delmarva Power and Light Company; Executive Committee of The Federal Power Bar Association; FPC Bureau of Natural Gas; FPC Office of Administrative Law Judges; FPC Office of Economics, Bureau of Power, Office of the General Counsel, and Office of

[1] See Attachment A.
[2] See Attachment B.

Special Assistants; Georgia Power Company; Gulf Power Company; Interstate Natural Gas Association of America; The Montana Power Company; Northern Natural Gas Company; Pacific Power and Light Company; Phillips Petroleum Company; Power Authority of the State of New York; Public Service Commission of the State of New York; Public Service Company of New Mexico; Public Service Electric and Gas Company; Southern California Edison Company; Tucson Gas and Electric Company; and Wisconsin Municipal Electric Utilities.

[FR Doc.77-16800 Filed 6-13-77;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-.....)

Evidence—Death

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: Section 404.704 of Title 20 of CFR, pertaining to evidence of death, is being amended to reflect the repeal of the Missing Persons Act and its replacement by 37 U.S.C. 555, applying to members of the uniformed services and their dependents and 5 U.S.C. 5565, applying to Federal civilian officers and employees and their dependents. The amendment also clarifies that, when a determination of death is made in respect to a missing person under either of these Federal statutes, in absence of evidence establishing a later date, the Social Security Administration shall use the date the person disappeared as the date of death for benefit payments rather than the date of death determined by the other department or agency.

EFFECTIVE DATE: This amendment shall be effective on June 14, 1977.

FOR FURTHER INFORMATION CONTACT:

William J. Ziegler, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: On August 25, 1976, there was published in the FEDERAL REGISTER (41 FR 35861) a notice of proposed rulemaking with proposed amendments to Subpart H, Regulations No. 4. The proposed amendment related to a finding of death for a person in missing status by an agency or department of the United States authorized by law to make such a determination. A finding of presumptive death made under section 5 of the Missing Persons Act (56 Stat. 143, 50 U.S.C. App. 1005), as amended, was acceptable to the Social Security Administration only as evidence of the fact of death but not of the date of death. The Missing Persons Act was repealed by Pub. L. 89-554, section 8(a), 80 Stat. 651. Members of the uniformed services and their dependents in a missing status may now be declared dead under 37 U.S.C. 555 (80 Stat. 628). Federal civilian officers and employees and their dependents in a missing status may now be declared dead under 5 U.S.C. 5565 (80 Stat. 492). The enactment of Pub. L. 89-554 resulted in no substantive change when the source law, i.e. section 5 of the Missing Persons Act, 50 U.S.C. App. 1005, was codified in section 5565 of title 5 and in section 555 of title 37 of the U.S.C. As under section 5 of the Missing Persons Act, when a finding of death is made under either 5 U.S.C. 5565 or 37 U.S.C. 555, the finding must include the date death is presumed to have occurred. Although the Federal agency concerned is legally free, upon review of the case, to continue the missing status if there is a reasonable presumption that the individual is alive, should it make a finding of presumed death the date of that death must be set at a time specified by the respective statutes. The date of presumed death is to be either a year and a day after the disappearance or, if the missing status was continued beyond 12 months from the time of the disappearance, a date determined by the agency concerned. These statutes also specify that the date is "for the purpose of the ending of crediting pay and allowances and settlement of accounts" and, in cases involving a member of a uniformed service, for the payment of death gratuities. Therefore, a determination made under these statutes must be accepted by the Social Security Administration as evidence of the fact of death but not of the date of death. The latter date is controlling only with respect to the agency making the determination of presumed death and only for the purposes indicated in the statutes. In the absence of evidence establishing a later date, the Social Security Administration will use the missing date (usually cited in the finding) as the date of death for purposes of benefit payments.

Interested persons were given the opportunity to submit, within 45 days, data, views, or arguments with regard to the proposed changes. The comment period has expired and no adverse comments were received. The proposed amendment is hereby adopted without change and is set forth below.

(Secs. 205, 1102, Social Security Act as amended; 49 Stat. 624 as amended; 49 Stat. 647, as amended, 53 Stat. 1362, as amended; (42 U.S.C. 405, 1302).)

(Catalog of Federal Domestic Program No. 13.805, Social Security Survivors Insurance)

NOTE.—The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement Under Executive Order 11821 and OMB Circular A-107.

Dated: May 16, 1977.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: June 8, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

20 CFR Part 404 is amended by revising paragraph (b) (3) of § 404.704 to read as follows:

§ 404.704 Evidence as to death.

* * * * *

(b) * * *

(3) A certified copy of an official report or finding of death made by any agency or department of the United States which is authorized or requested to make such report or finding in the administration of any law of the United States, or a statement of the contents of such report or finding certified by an individual designated in § 404.701 (g) (2) or (3), as appropriate: *Provided, however,* That a finding of presumptive death made pursuant to the missing persons provisions of 5 U.S.C. 5565 or 37 U.S.C. 555, shall be accepted only as evidence of the fact of death and not of the date of death. In the absence of evidence establishing a later date, the Social Security Administration shall use the missing date as the date of death for purposes of benefit payments.

* * * * *

[FR Doc.77-16907 Filed 6-13-77;8:45 am]

[Regs. No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determination of Disability or Blindness

ADDITIONAL MEDICAL CRITERIA FOR DETERMINATIONS OF DISABILITY FOR CHILDREN UNDER AGE 18; CORRECTION

AGENCY: Social Security Administration, HEW.

ACTION: Correction notice.

SUMMARY: This document corrects FR Doc. 77-7605 that appeared at page 14705 in the FEDERAL REGISTER of March 16, 1977.

FOR FURTHER INFORMATION CONTACT:

John W. Modler, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7337.

SUPPLEMENTARY INFORMATION: The following corrections should be made on page 14711:

1. The references in §§ 109.02B2, 109.04B, and 109.05C corrected by changing "§ 100.02B and C" to "§ 100.02A and B."

2. The references in §§ 109.08C, 109.09B, and 109.11C corrected by changing "§ 100.02B or C" to "§ 100.02A or B."

3. The reference in § 109.10 corrected by changing "§ 100.02C" to "§ 100.02B."

Dated: June 8, 1977.

L. DAVID TAYLOR,
Acting Deputy Assistant Secretary for Management Planning and Technology.

[FR Doc.77-16906 Filed 6-13-77;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76P-0092]

PART 155—CANNED VEGETABLES

Standard of Identity for Canned Mushrooms

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document provides for optional use of safe and suitable organic acids in processing canned mushrooms where the inside of the container is fully enamel-lined or in glass containers with fully enamel-lined caps. This amendment of the standard of identity for canned mushrooms is based on a proposal issued pursuant to a petition submitted by the Mushroom Processors Association.

DATES: Effective August 1, 1977, except as to any provision that may be stated by the filing of proper objections; objections by July 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Prince G. Harrill, Bureau of Foods (HFF-411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204 (202-245-1164).

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued, in the FEDERAL REGISTER of May 3, 1976 (41 FR 18315), a proposal based on a petition submitted by the Mushroom Processors Association, Box 147, Kennett Square, PA 19348, to amend § 51.990 (21 CFR 51.990), subsequently recodified as § 155.200 by publication in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), the standard of identity for canned vegetables other than those specifically regulated, to provide for the optional use of safe and suitable organic acids where enamel-lined cans are used as an alternative to the conventional plain tinplate cans for the canning of mushrooms.

Nine comments were received in response to the proposal. Four comments supported and three opposed the proposal as published. Two comments requested modification of the proposal. The comments and the Commissioner's conclusions are as follows:

1. One comment suggested that there be a statement on the label that "discoloration is not harmful."

The discoloration—on the inner surface of the can and resulting from the reaction of the product with the thin tin-coated containers—was fully discussed in the proposal. This type of tin-coating surface discoloration is not considered to be a health hazard. The Commissioner concludes, however, that discoloration could result from conditions that may be hazardous to health, such as microbial decomposition. Thus, any label statement similar to that suggested by the comment could result in an adultered and potentially hazardous product being erroneously considered suitable for consumption. Therefore, the Commissioner is not providing for such a label statement.

2. One comment argued that many individuals are allergic to foods such as corn and soybeans and as a result are not able to eat either canned fruits containing corn sweeteners or wide varieties of foods containing lecithin derived from soybeans. Further, the comment was of the opinion that even natural food additives should not be permitted in foods.

The Commissioner is aware that some persons are allergic to unpurified derivatives of corn and soybeans. But he is not aware, nor was any information submitted to substantiate the claim, that the acids that would be used for this technological function contain allergens that would be harmful or undesirable.

3. Two comments opposed the exclusion of vinegar as an acidulant. One comment stated that since the flavor of mushrooms acidified with vinegar is unpleasant, its use would be self-limiting. In addition, a second comment stated that no food processor should be statutorily denied the opportunity to use a well-established acidulant.

The Commissioner recognizes that vinegar is commonly used in the manufacture of pickled and spiced mushrooms. He is of the opinion, however, that such foods, because of their distinct flavor, do not purport to be the standardized food. The Commissioner, therefore, concludes that the standard will not provide for the optional use of vinegar for the acidification of canned mushrooms.

4. One comment recommended that the use of safe and suitable organic acids also be permitted with mushrooms processed in glass containers with fully enamel-lined caps.

The Commissioner concurs with the recommendation and is revising the final regulation to so provide.

In consideration of the comments received and other relevant information, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to revise the standard of identity for canned vegetables other than those specifically regulated, as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701 (e), 52 Stat. 1046 as amended, 70 Stat. 919 (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner is revising § 155.200(c)(12) to read as follows:

§ 155.200 Certain other canned vegetables.

* * * * *

(c) * * *

(12) A vinegar or any safe and suitable organic acid for all vegetables (except artichokes, in which the quantity of such optional ingredient is prescribed by the introductory text of paragraph (c) of this section, and except canned mushrooms, in which no vinegar is permitted), in a quantity which, together with the amount of any lemon juice or concentrated lemon juice that may be added, is not more than sufficient to permit effective processing by heat without discoloration or other impairment of the article. Organic acid, other than ascorbic acid as provided for in paragraph (c)(7) of this section, shall be used in canning mushrooms only where the inside metal of the container is fully enamel-lined and in glass containers with fully enamel-lined caps.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 14, 1977, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective July 14, 1977, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(a)).)

Dated: June 6, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-16656 Filed 6-13-77;8:45 am]

[Docket No. 76N-0053]

PART 155—CANNED VEGETABLES

Canned Green Beans and Canned Wax Beans; Amended Standards of Identity and Quality

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: These amendments for canned green beans and canned wax beans, based on a proposal responding to comment from a packer, provide for a maximum liquid content requirement for vacuum-pack beans and a method for determining the quantity of liquid in the container. The confirmation of the effective date of revised canned green and wax bean standards is published elsewhere in this issue of the FEDERAL REGISTER, under FDA Docket No. 76S–0053.

EFFECTIVE DATES: Voluntary compliance, including any labeling changes: August 15, 1977. Mandatory compliance for all products initially introduced into interstate commerce: July 1, 1979. Objections by July 14, 1977.

ADDRESSES: Written objections to the Hearing Clerk (HFC–20), Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Prince G. Harrill, Bureau of Foods (HFF–411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, DC 20204 (201–245–1164).

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued in the FEDERAL REGISTER of April 19, 1976 (41 FR 16475), a proposal to amend the standards of identity (21 CFR 51.10) and quality (21 CFR 51.11) for canned green beans and canned wax beans to provide for a maximum liquid content requirement for vacuum-pack beans and a method for determining the quantity of liquid in the container. Sections 51.10 and 51.11 were subsequently combined and redesignated as § 155.120 (a) and (b), respectively, by recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302).

No comments were received in response to the proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701 (e), 52 Stat. 1046 as amended, 70 Stat. 919 (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 155 is amended in § 155.120 by revising paragraphs (a)(4) (ii) and (b)(2)(i) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

* * * * *

(a) * * *

(4) * * *

(ii) The following shall be included as part of the name or in conjunction with the name of the food:

(a) A declaration of any flavoring that characterizes the product as specified in § 101.22 of this chapter.

(b) A declaration of any spice, seasoning, or garnishing that characterizes the product, e.g., "with added spice" or, in lieu of the word "spice," the common name of the spice, e.g., "seasoned with green peppers."

(c) The words "vacuum pack" or "vacuum packed" when the weight of the liquid in the container, as determined by the method prescribed in paragraph (b)(2)(i) of this section is not more than 25 percent of the net weight, and the container is closed under conditions creating a high vacuum in the container.

(d) The name of the optional style of bean ingredient as set forth in paragraph (a)(2)(iii) of this section or, if a product consists of a mixture of such styles, the words "mixture of _____" the blank to be filled in with the names of the styles present, arranged in the order of decreasing predominance, if any, by weight of such ingredients. If the product consists of whole beans and the pods are packed parallel to the sides of the container, the word "whole" may be preceded or followed by the words "vertical pack," or if the pods are cut at both ends and are of substantially equal lengths, the words "asparagus style" may be used in lieu of the words "vertical pack." If the product consists of short cuts or diagonal short cuts, a numerical expression indicating the predominant length of cut in the finished food may be used in lieu of the word "short", e.g., "½ inch cut."

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 millimeters (0.0937 inch), which has been previously weighed. The diameter of the sieve is 20.3 centimeters (8 inches) if the quantity of the contents of the container is less than 1.36 kilograms (3 pounds) and 30.5 centimeters (12 inches) if such quantity is 1.36 kilograms (3 pounds) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth in the "Definitions of Terms and Explanatory Notes," p. xviii of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th ed., 1975.[1] Without shifting the material on the sieve, incline the sieve 17 to 20 degrees to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (ounces) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 14, 1977, submit to the Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: Except as to any provisions that may be stayed by the filing of proper objections, compliance with these regulations, including any required labeling changes, may begin August 15, 1977, and all products initially introduced into interstate commerce on or after July 1, 1979, shall comply. Notice of the filing of objections or lack thereof will be published in the FEDERAL REGISTER.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)).)

Dated: June 8, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

NOTE—Incorporation by reference provisions approved by the Director, Office of the Federal Register, March 11, 1976. The referenced materials are on file in the Federal Register library.

[FR Doc.77–16784 Filed 6–13–77;8:45 am]

[Docket No. 76S–0053]

PART 155—CANNED VEGETABLES

Canned Green Beans and Canned Wax Beans; Confirmation of Effective Date of Amendments and Further Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of revised standards of identity and quality for canned green beans and canned wax beans, published in the FEDERAL REGISTER of April 19, 1976 (41 FR 16454), to more closely conform the standards to international standards. (Appearing elsewhere in this issue of the FEDERAL REGISTER is a regulation, FDA Docket No. 76N–0053, amending the standards for canned green beans and canned wax beans to provide for "vacuum pack" bean products.)

EFFECTIVE DATES: Voluntary compliance, including labeling changes: June 14, 1977. Mandatory compliance for all products initially introduced into interstate commerce: July 1, 1979.

[1] Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Prince G. Harrill, Bureau of Foods (HFF-411), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204 (201-245-1164).

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued in the FEDERAL REGISTER of April 19, 1976 (41 FR 16454) a final regulation revising the standards of identity (21 CFR 51.10) and quality (21 CFR 51.11) for canned green beans and canned wax beans in consideration of the "International Standard for Canned Green Beans and Canned Wax Beans" submitted to the United States by the Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission. The final regulation specified the types and styles of beans that may be packed under the names "canned green beans" and "canned wax beans," listed the optional ingredients that may be used, and designated how the products are to be labeled. In addition, the standard of quality listed the types of defects and numbers of defects that may not be exceeded if the products are to be marketed without being labeled substandard.

Sections 51.10 and 51.11 were combined and redesignated as § 155.120 (a) and (b), respectively, by recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302). Discussion of the amendments below is referenced to the current format.

Three comments were received in response to the April 19, 1976, final regulation. These were from Agripac, Inc., the National Canners Association, and the Food Science Department, Oregon State University. None of those responding requested a hearing, but merely suggested several changes in the final regulation.

The suggested changes and the Commissioner's conclusions about them are as follows:

1. Section 155.120(a)(2)(iii)(*b*) defines the style of pack "shoestring or sliced lengthwise or French style" as "pods sliced lengthwise or at an angle of less than 45° to the longitudinal axis." One comment said that snap beans "sliced at an angle of 30° cut" should more properly be labeled as "diagonal cuts." It maintained that the appearance and flavor of a pack cut at 30° vary considerably from beans sliced lengthwise. It further maintained that most buyers would not accept beans cut at even 15° as French style. The comment proposed that shoestring or sliced lengthwise or French style beans be defined simply as "sliced lengthwise." It also proposed to change the "less than 45°" to "less than 15°" as an acceptable, though less desirable, alternative.

The definition of the style "shoestring or sliced lengthwise or French style" set forth in the final regulation was adopted to be consistent with the Codex definition of the style. But the Commissioner agrees that beans sliced at an angle of less than 45° to the longitudinal axis would be more properly labeled in the United States as diagonal cuts. Therefore, he is deleting the phrase "or at an angle of less than 45° to the longitudinal axis" from the definition set forth in § 155.120(a)(2)(iii)(*b*). The definition will read "pods sliced lengthwise."

2. One comment pointed out that, in contrast to the earlier FDA standards for green beans, the recently revised standard does not specifically provide for naming the variety of beans in connection with the name of the food. It stated that this omission is a matter of particular concern to canners of "Blue Lake" beans. The comment submitted that the failure to provide for the varietal name in conjunction with the term "beans" under the revised standard of identity for green beans is unreasonable and probably represents a drafting oversight. Therefore, it suggested that § 51.10 (d)(3)(ii) (now § 155.120(a)(4)(iii)(*b*)) be revised to read: "The name of the optional varietal type as specified in paragraph (b)(2) [(a)(2)(ii)] of this section, or the specific varietal name, e.g., 'Blue Lake Green Beans' or both."

The Commissioner agrees that the regulation should provide for the optional use of the varietal name of the green bean or wax bean in conjunction with the name of the food, and § 155.120 (a)(4)(iii)(*b*) is revised accordingly.

3. One comment pointed out that there may be conflict in the standard of quality (§ 51.11 (now § 155.120(b))) between the statement of minimum standard of quality for tough strings, § 51.11 (a)(2) (now § 155.120(b)(1)(ii)), and the final sentence of the method for determining tough strings, § 51.11(b)(7) (now § 155.120(b)(2)(vii)). The comment suggested that § 51.11(a)(2) (now § 155.120(b)(1)(ii)), which states, "Not more than 5 percent by weight of the units may possess strings that will support the weight of 250 g (8.8 oz) for 5 seconds or longer," is correctly stated. It pointed out, however, that the last sentence of the official method set forth in § 51.11(b)(7) (now § 155.120(b)(2)(vii) requires that the tough strings be assayed in terms of a count of strings per sample weight rather than by percent per sample weight. The comment also pointed out that the sample string count has no validity unless based on a standard unit count per unit sample. It suggested that the wording in the procedure for tough-string determination in § 51.11 (b)(6) and (b)(7) (now § 155.120(b)(2)(vi) and (vii)) be revised to retain bean unit and string identity so that as the individual strings are tested as tough, the corresponding units can be categorized as bean units containing tough strings.

The Commissioner agrees that, due to an oversight, the statement of minimum standard of quality for tough strings in § 51.11(a)(2) (now § 155.120(b)(1)(ii)) was expressed in terms of percent by weight as proposed by Codex, whereas the method described in § 51.11(b)(6) and (7) (now § 155.120(b)(2)(vi) and (vii)) required that tough strings be assayed in terms of a count of strings per sample weight as set out in the standard being amended. He recognizes that the provisions are inconsistent and that one or the other must be changed. However, he has no data on the percentage method, so he cannot compare the two methods. Therefore, he is changing the language of § 51.11(a)(2) (now § 155.120(b)(1)(ii)) back to the original sample string count method (as set out in the standard being amended) to be consistent with the term used in § 51.11(b)(6) (now § 155.120(b)(2)(vi)). He realizes that this action results in creating a deviation from the Codex standard. If interested persons have data in regard to determining tough strings in beans on a percentage basis, the Commissioner invites submission of an appropriate petition supported by such data proposing a change in the method.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)) and under authority delegated to the Commissioner (21 CFR 5.1), Part 155 is amended in § 155.120 by revising paragraphs (a)(2)(iii)(*b*), (a)(4)(iii)(*b*), and (b)(1)(ii) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *
(2) * * *
(iii) * * *

(*b*) *Shoestring or sliced lengthwise or French style.* Pods sliced lengthwise.

* * * * *

(4) * * *
(iii) * * *

(*b*) The name of the optional varietal type as specified in paragraph (a)(2)(ii) of this section, or the specific varietal name, e.g., "Blue Lake Green Beans", or both.

* * * * *

(b) * * *
(1) * * *

(ii) In case there are present pods or pieces of pods 10.7 mm ($\frac{27}{64}$-inch) or more in diameter, there are not more than 12 strings per 340 gm (12 ounces) of drained weight which will support 227 gm (one-half pound) for 5 seconds or longer.

* * * * *

Effective date: Compliance with §§ 51.10 and 51.11 promulgated in the FEDERAL REGISTER of April 19, 1976 (41 FR 16454), and subsequently recodified as § 155.120 (a) and (b), respectively (42 FR 14302), as amended herein, may begin June 14, 1977, and all products initially introduced into interstate commerce on or after July 1, 1979, shall fully comply.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)).)

Dated: June 8, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-16785 Filed 6-13-77;8:45 am]

SUBCHAPTER G—COSMETICS

[Docket No. 75N-0005]

PART 701—COSMETIC LABELING

Hypoallergenic Cosmetic Products; Judicial Stay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Judicial Stay of Effective Date.

SUMMARY: This document announces the judicial stay of the effective date for complying with the requirement for cosmetic products bearing the claim "hypoallergenic." The stay was ordered by the United States Court of Appeals for the District of Columbia Circuit, and it applies to the June 6, 1977 date for completion of testing for cosmetic products in commercial distribution on June 6, 1975.

EFFECTIVE DATE OF STAY: June 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Heinz J. Eiermann, Bureau of Foods (HFF-440), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, DC 20204 (202-245-1530).

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is notifying interested persons that the United States Court of Appeals for the District of Columbia Circuit has stayed the June 6, 1977, effective date for complying with the requirement in § 701.100 (21 CFR 701.100) that cosmetic products bearing the claim "hypoallergenic," or other terms and phrases that imply that the product is less likely to cause adverse reactions than similar-use competitive products, be shown by scientific studies to cause fewer adverse reactions than defined reference products.

The final regulation was published in the FEDERAL REGISTER of June 6, 1975 (40 FR 24442), to be effective with respect to all cosmetics introduced into interstate commerce after July 7, 1975. The regulation provided that the requirement for scientific studies must be met by June 6, 1977, for cosmetic products in commercial distribution on June 6, 1975, and before "hypoallergenic" claims are made for products not in commercial distribution on June 6, 1975.

By notice published in the FEDERAL REGISTER of July 28, 1975 (40 FR 31606), the Commissioner of Food and Drugs administratively stayed the effectiveness of the regulation pending completion of a lawsuit brought in the United States District Court for the District of Columbia to declare the regulation invalid. However, the June 6, 1977 effective date for the completion of testing for products already in commercial distribution was not stayed. Subsequently, the district court upheld the regulation. *Almay, Inc.* v. *Weinberger*, 417 F. Supp. 758 (1976).

By notice published in the FEDERAL REGISTER of August 4, 1976 (41 FR 32583), FDA announced that the administrative stay of the regulation would be discontinued effective September 3, 1976. Thereafter, the plaintiffs in the district court lawsuit sought a judicial stay of the regulation pending appeal. The application for a stay was denied on August 26, 1976. Accordingly, the requirements of the regulation became effective as of September 3, 1976, for all cosmetic products not in commercial distribution on June 6, 1975.

Oral argument on the appeal of the district court's decision was subsequently scheduled for June 9, 1977 (*Almay, Inc.* v. *Califano*, No. 76-1718 (D.C. Cir.)). On May 27, 1977, the appellants moved for "an order staying the effective date of the regulation under review until this Court can rule on the merits of the appeal."

On June 7, 1977, the Court of Appeals entered an order stating that the appellants' "motion for stay is granted pending further order of the Court."

The Commissioner interprets the order as applying only to the June 6, 1977 date for the completion of testing for cosmetic products in commercial distribution on June 5, 1976. Products not in commercial distribution as of that date have been required to comply with the regulation since September 3, 1976. The "effective date" that was sought to be stayed by the May 27 motion described above was referred to in the motion as "the June 6, 1977, date for completion of testing," a date that applies only to products in commercial distribution on June 6, 1975.

Accordingly, the Commissioner does not regard the judicial stay as affecting the requirement that products not in commercial distribution on June 6, 1975, comply with the regulation. Therefore, in § 701.100 "Hypoallergenic" and other claims of relative safety, the June 6, 1977 effective date in paragraph (h)(1) is stayed by order of the United States Court of Appeals pending further order of the Court.

Dated: June 9, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-16957 Filed 6-10-77;9:59 am]

Title 24—Housing and Urban Development

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

[Docket No. R-77-457]

PART 25—MORTGAGEE REVIEW BOARD

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The Secretary is revising membership of the Mortgagee Review Board responsible for withdrawing HUD approval from Mortgagees. The change is needed in part to improve the effectiveness of the Board and in part to reflect recent changes in HUD's organization.

EFFECTIVE DATE: June 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Henry Hubschman, Room 10222, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410 (202-755-5634).

SUPPLEMENTARY INFORMATION: In Part 25, published September 18, 1975 (40 FR 43026), the Secretary established a Mortgagee Review Board and gave it all powers necessary and incident to withdrawing approval from mortgagees engaged in mortgage insurance under the National Housing Act, 12 U.S.C. 1701. This Amendment to Part 25:

1. Reflects a recent merger of the Office of the Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner and the Office of the Assistant Secretary for Housing Management.

2. Includes as a Board member the Assistant Secretary for Administration, and

3. Names the Inspector General as a non-voting advisor to the Board.

Because this revision involves the Department's internal management, comment and public procedure are unnecessary under 5 U.S.C. 553 and 24 CFR Part 10. Moreover, good cause exists for making the amendment effective upon publication.

Findings of inapplicability with respect to Environment and Inflation are not required.

Accordingly, 24 CFR Part 25.2 is amended to read as follows:

§ 25.2 Composition of the Board:

(a) *Members.* The Board consists of the following members: The Assistant Secretary for Housing—Federal Housing Commissioner, Chairman; The General Counsel; The Assistant Secretary for Administration, or their designees.

(b) *Advisor.* The Inspector General, or designee, serves as a non-voting advisor to the Board.

Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Issued at Washington, D.C. June 8, 1977.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban Development.

[FR Doc.77-16850 Filed 6-13-77;8:45 am]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER R—IRRIGATION PROJECTS

SUBCHAPTER T—OPERATION AND MAINTENANCE

GENERAL IRRIGATION PROJECT REGULATIONS

Operation and Maintenance

JUNE 1, 1977.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The purpose of these regulations is to update existing regulations governing the operation and maintenance of Indian Irrigation Projects and to provide the Officer-in-Charge greater flexibility in the day-to-day operation of the Projects. The revision consolidates the regulations for all Indian Irrigation Projects in a new Part 191. It also provides that the Area Director announce the operation and maintenance rates and related information by public notice in the FEDERAL REGISTER. These operation and maintenance rates and related information will no longer be codified in the Code of Federal Regulations. As new rates are announced the corresponding sections in Part 221 of Title 25 of the Code of Federal Regulations will be deleted.

DATES: These regulations shall become effective July 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles P. Corke, Bureau of Indian Affairs, Department of the Interior, Washington, D.C. 20245; telephone number (202) 343-2287.

SUPPLEMENTARY INFORMATION: Beginning on page 39030 of the September 14, 1976, FEDERAL REGISTER (41 FR 39030), there was published a notice of proposed rulemaking. All interested persons were given 60 days to submit written comments, suggestions, or objections regarding the proposed revision.

Comments were received from the Wind River Water Users Association, the Shoshone and Arapaho Tribes, and from the Bureau of Indian Affairs Portland Area Director, the Flathead Project Engineer, and the Wind River Agency Superintendent. The suggestions were carefully reviewed. Corrections and changes were made as appropriate. The changes were made to simplify or to clarify, and are not considered to have significantly altered the proposed regulations as published.

The primary author of this document is Charles P. Corke, General Engineer (Hydrology), Bureau of Indian Affairs, Washington, D.C. 20245, telephone number (202) 343-2287.

Therefore Part 191 is revised to read as set forth below.

PART 191—OPERATION AND MAINTENANCE

Sec.

191.1 Administration.
191.2 Irrigation season.
191.3 Domestic and stock water.
191.4 Farm units.
191.5 Delivery points.
191.6 Distribution and apportionment of water.
191.7 Application for and record of deliveries of irrigation water.
191.8 Surface drainage.
191.9 Structures.
191.10 Fencing.
191.11 Obstructions.
191.12 Rights-of-way.
191.13 Crops and statistical reports.
191.14 Carriage agreements and water rights applications.
191.15 Leaching water.
191.16 Excess water.
191.17 Delivery of water.
191.18 Service or farm ditches.
191.19 Operation and maintenance assessments.
191.20 Water users' ledgers.
191.21 Health and sanitation.
191.22 Complaints.
191.23 Disputes.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. § 191.4(b) also issued under 34 Stat. 1024, 38 Stat. 583, and 68 Stat. 1026. Sections 191.4(a), 191.4(c), 191.16(b), and 191.17(f) also issued under sec. 11, 39 Stat. 142.

§ 191.1 Administration.

(a) The Agency Superintendent, Project Engineer or such official as authorized by the Area Director is the Officer-in-Charge of those Indian Irrigation Projects or units operated or subject to administration by the Bureau of Indian Affairs, whether or not each project or unit is specifically mentioned in this part. The Officer-in-Charge is fully authorized to administer, carry out, and enforce these regulations either directly or through employees designated by him. Such enforcement includes the refusal to deliver water.

(b) The Officer-in-Charge is authorized to apply to irrigation subsistence units or garden tracts only those regulations in this part which in his judgment would be applicable in view of the size of the units and the circumstances under which they are operated.

(c) The Officer-in-Charge is responsible for performing such work and taking any action which in his judgment is necessary for the proper operation, maintenance and administration of the irrigation project or unit. In making such judgments, the Officer-in-Charge consults with water users and their representatives, and with tribal council representatives, and seeks advice on matters of program priorities and operational policies. The Officer-in-Charge will be guided by the basic requirement that the operation will be so administered as to provide the maximum possible benefits from the project's or unit's constructed facilities. The operations will insure safe, economical, beneficial, and equitable use of the water supply and optimum water conservation.

(d) The Secretary of the Interior reserves the right to exercise at any time all rights, powers, and privileges given him by law, and contracts with irrigation districts within Indian Irrigation Projects. Close cooperation between the Indian tribal councils, the project water users and the Officer-in-Charge is necessary and will be to the advantage of the entire project.

(e) The Area Director, or his delegated representative, is authorized to fix as well as to announce, by proposed and final public notice published in the FEDERAL REGISTER, the annual operation and maintenance assessment rates for the irrigation projects or units within his area of responsibility. In addition to the rates, the notices will include such information as is pertinent to the assessment, payment, and collections of the charges including penalties and duty of water.

(f) The rates will be based on a carefully prepared estimate of the cost of the normal operation and maintenance of the project. Normal operation and maintenance is defined for this purpose as the average per acre cost of all activities involved in delivering irrigation water and maintaining the facilities.

(g) San Carlos Irrigation Project, Arizona. The administration, rights obligations and responsibilities for the operation and maintenance of this project are set forth in the Repayment Contract dated June 8, 1931 as supplemented or amended, between the San Carlos Irrigation and Drainage District and the United States as authorized by the Act of June 7, 1924 (43 Stat. 475-476) and the Secretarial Order of June 15, 1938, titled "Order Defining Joint, District and Indian Works of the San Carlos Federal Irrigation Project: Turning over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District." The regulations appearing in this subchapter apply only to the Indian lands works and in the San Carlos Irrigation Project unless specified otherwise, and should not be interpreted or construed as amending or modifying the District Contract or the Secretarial Order.

§ 191.2 Irrigation season.

The irrigation season, when water shall be available for irrigation, will be established by the Officer-in-Charge.

§ 191.3 Domestic and stock water.

Domestic or stock water will not be carried in the project's or unit's irrigation system when in the judgment of the Officer-in-Charge such practice will:

(a) Interfere with the operation and maintenance of the system.

(b) Be detrimental to or endanger the canal, lateral system and/or related structures.

(c) Adversely affect the stored water supply for irrigation.

§ 191.4 Farm units.

For the purpose of delivery of water and the administration of the project or unit, a farm unit is defined as follows:

(a) For the Blackfeet, Crow, Fort Belknap, and Fort Peck Irrigation Projects, Montana, and the Colville Irrigation Project, Washington:

(1) Forty (40) or more contiguous acres of land in single ownership with the exception that those original Indian allotments containing less than 40 irrigable acres of the same subdivision of the public land survey shall also be considered farm units.

(2) Forty (40) or more contiguous acres of Indian-owned land under lease to one party.

(3) Forty (40) contiguous acres in multiple ownership within the same forty (40) acre subdivision of the public land survey.

(b) For the Fort Hall Irrigation Project, Idaho:

(1) Twenty (20) or more contiguous acres of land in single ownership covered by one or more water rights contracts.

(2) Twenty (20) or more contiguous acres of Indian-owned land under lease to one party or being farmed by one Indian.

(3) Ten (10) or more contiguous acres of subdivided land in multiple ownership.

(c) For the Flathead Irrigation Project, Montana; A contiguous area of land in single ownership containing not less than one forty (40) acre subdivision of the public land survey, or the original allotment as established by the Secretary of the Interior and as recorded or amended in the records of the Bureau of Land Management. In the case of leased land, it is defined as a contiguous area under a single lease. For Bureau of Land Management regulations pertaining to Flathead Project, see 43 CFR 2211.8, Flathead Irrigation District, Montana.

(d) For the Wapato Irrigation Project (all units), Washington:

(1) Eighty (80) or more contiguous acres in single ownership at the time of the establishment of the delivery system, or when subsequent changes of ownership result in larger tracts under single ownership and the owner requests that this land be treated as a farm unit, whether covered by one or more water right contracts.

(2) Eighty (80) or more contiguous acres of Indian-owned land under lease to one person or being farmed by one Indian.

(3) Eighty (80) contiguous acres in multiple ownership: *Provided*, That such acreage shall be within the same eighty (80) acre subdivision of the U.S. public land survey.

(4) In all cases where an original Indian allotment consisted of less than eighty (80) contiguous acres, such original Indian allotment, whether (i) under single or multiple ownership and/or covered by one or more water right contracts, (ii) under lease to the same or different lessees, or (iii) farmed by one or more Indians, shall be treated as a farm unit.

(e) For all other projects or units: An original allotment, homestead, an assignment of unallotted tribal lands, or a contiguous, development lease area.

§ 191.5 Delivery points.

(a) Project operators will deliver irrigation water to one point on the boundary of each farm unit within the irrigation project. The Officer-in-Charge may establish additional delivery points when in his judgment it is impractical for the landowner to irrigate his farm unit from the one delivery point for such reasons as topography, isolation, or cost. When irrigation water is supplied from wells, the delivery point may be established at the well head. Where portions of a farm unit lie at an elevation too high to be watered by gravity flow from the normal elevation of water in the project distribution system, no change will be made in the water level elevation of the project system so as to place water on such land. Where such land has been included in the project, the landowner may install and operate pumping equipment at his own expense to raise the water to such included land from a point designated by the Officer-in-Charge and in accordance with his specifications. If the landowner so installs pumping equipment and pays the construction and maintenance charges, the project will deliver the same amount of water per acre for this land as the project delivers at the delivery point for other lands on the project.

(b) If a farm unit for which a project delivery point has been established is subsequently subdivided into smaller units by the owner or owners of the farm unit, the following provisions apply:

(1) A plat or map of the subdivision must be recorded and a copy filed with the Officer-in-Charge. The plat or map must show how the irrigation water is to be delivered to the irrigable acres in the subdivision.

(2) No further extensions or alterations in the project's system will be provided officials to serve the subdivided units, except as agreed to by the Officer-in-Charge and at the landowner's expense.

(3) Any additional construction necessary to deliver irrigation water to these units must be mutually worked out between the original owner of the farm units and the new owners of the subdivided unit at their expense.

(4) The project will not bear any responsibility for the operation and maintenance of such internal systems, or the division of irrigation water after it is delivered to the established project delivery points.

(c) Where project points of delivery have been established for farm units which are to be combined under lease or ownership into a singular farm unit to be irrigated by means of a sprinkler or more efficient system, the Officer-in-Charge may approve the removal or relocation of project delivery facilities. Such reorganization shall be at the expense of the landowners or lessees in conformance with established project standards and a time schedule which will not disrupt water delivery service to others on the system.

(d) Where a reorganization has been approved and established as in § 191.5 (c), any reversion requiring reestablishment of removed or relocated project delivery facilities must be approved by the Officer-in-Charge and conform to established project standards and time schedules which will not disrupt water delivery service to other water users on the system. All expenses incurred shall be the responsibility of the landowners or lessees.

§ 191.6 Distribution and apportionment of water.

(a) The Officer-in-Charge will establish the method of and procedures for the delivery and distribution of the available irrigation water supply. He will endeavor to apportion the water at all times on a fair and equitable basis between all project water users entitled to the receipt of irrigation water.

(b) Any person who interferes with the flow of water in or from the project's storage, carriage or lateral systems or opens or closes or in any other way changes the position of a headgate or any other water control structure without specific authority from the Officer-in-Charge or his designated representative will be subject to prosecution. Cutting a canal or lateral bank for the purpose of diverting water or placing an obstruction in such facilities in order to change the flow of water through a headgate will be considered a violation of this section.

(c) San Carlos Irrigation Project, Arizona.

(1) The portion of the project's common water supply available for the Indian lands will be distributed subject to beneficial use in equal per acre amounts to each acre under irrigation and cultivation, insofar as possible.

(2) All water users (Indian and non-Indian) will be notified at the beginning of the irrigation season of the amount of stored and pumped water available. An apportionment of this water will be recommended by the Officer-in-Charge of the irrigation project to the approval of the Area Director. Subsequent apportionments may be made if and when additional water is available.

(3) If it is determined by the Officer-in-Charge that there is water in excess of demands and available storage facilities, he will promptly notify all water users that such water is available. This water shall not be charged against the water apportionment of the land on which it is used.

(d) Uintah Irrigation Project, Utah.

(1) Water will be delivered to all lands under the Lakefork, Uintah and Whiterocks Rivers in accordance with the provisions of the decree of the Federal Court in the cases of the "United States v. Dry Gulch Irrigation Company, et al.," and the "United States v. Cedarview Irrigation Company, et al.," which decrees fix the maximum duty of three (3) acre-feet per acre for the period from March 1 to November 1 of each year. The rate of delivery will be substantially in accordance with the following schedule except that it may be modified by the Officer-in-Charge at such times as changed climatic conditions and the water supply indicate that such modification would be beneficial to the project:

Period	Acres per second-feet	Acre feet per acre
Mar. 1 to 18	None	None
Mar. 19 to 31	1,000	0.023
Apr. 1 to 10	800	.025
Apr. 11 to 20	400	.050
Apr. 21 to 30	200	.099
May 1 to 10	180	.110
May 11 to 20	135	.147
May 21 to 31	95	.229
June 1 to 20	70	.566
June 21 to 31	85	.233
July 1 to 10	90	.220
July 11 to 20	95	.208
July 21 to 31	100	.218
Aug. 1 to 10	133	.147
Aug. 11 to 20	155	.128
Aug. 21 to 31	175	.124
Sept. 1 to 10	195	.101
Sept. 11 to 30	220	.180
Oct. 1 to 10	220	.090
Oct. 11 to 20	300	.066
Oct. 21 to 31	600	.036
Total		3.000

(2) The rotation method will be used in distributing the water diverted from the Lakefork, Uintah and Whiterocks Rivers. Rotation schedules will be prepared under direction of the Officer-in-Charge and will be put into effect each season as soon as it is determined what acreage is to be irrigated. A written copy of the water schedule will be delivered to each water user showing the time that his turn starts on each tract and the duration of each turn.

(3) In the event a rotation system is adopted for lands receiving water from the Duchesne River, the same procedure will be used as for the lands under the Lakefork, Uintah and Whiterocks Rivers. The Officer-in-Charge will advise all water users sufficiently in advance of the time the rotation schedule will go into effect.

(e) Wapato Irrigation Project, Washington.

(1) To protect adjoining lands against seepage and erosion by the excess use of water on the bench lands of the Wapato-Satus Unit, the maximum delivery of water to the bench lands shall not exceed 4.5 acre-feet per acre per season.

(2) The rate of delivery to lands of the Satus 2 and Satus 3 subunits shall not exceed one (1) cubic foot per second for each 50 irrigated acres.

(3) The measurement and distribution of water for the lands on the Ahtanum Unit shall take place at the mutually advantageous points on the Ahtanum Main or Lower Canals. The conveyance of the water from these points of distribution to the irrigable acres of the farm units shall be entirely by and at the expense of the individual operators of the farms. However, when several such users join together to use one single channel for the conveyance of their water to the points of final diversion, they shall be jointly responsible for the channel of conveyance and the apportionment of the water to their respective farm units.

§ 191.7 Application for and record of deliveries of irrigation water.

(a) Except when rotation schedules have been established and are being followed, water users in requesting the delivery of water will so notify the Officer-in-Charge or his designated representative by such means and with such advance notice as may be required by system operations and as established by the Officer-in-Charge. The request shall indicate the time the water is to be delivered, the period of time it will be used, the rate of flow desired, and where the water will be used.

(b) It is the responsibility of the ditchriders during the irrigation season to maintain records showing the beginning and ending time of each water delivery, the amount of such delivery, and the estimated acreage irrigated. Such records are to be filed at the irrigation project office at the end of the season.

(c) Water users on the Indian portion of the San Carlos Indian Irrigation Project will submit their requests for water to the Superintendent, Pima Agency.

§ 191.8 Surface drainage.

(a) The water users will be responsible for all waste water resulting from their irrigation practices and for its conveyance to project canals, drains, wasteways or natural drainage channels. Any expenses involved in doing this will be borne by the water user. Waste water may be emptied into project constructed ditches only at points designated by and in a manner approved by the Officer-in-Charge. In those situations involving two or more landowners and/or water users, it is their responsibility to work out a satisfactory arrangement among themselves for the conveyance of their waste water to project ditches or natural drainage channels.

(b) Waste water shall not be permitted to flow upon or collect in road or project rights-of-way. Failure to comply with this requirement could result in the Officer-in-Charge refusing the further delivery of water.

§ 191.9 Structures.

(a) All structures, including bridges or other crossings, which are necessary as a part of the project's irrigation and drainage system will be installed and maintained by the project.

(b) During the construction of a new irrigation project or the extension of an existing project, bridges, crossings or other structures may be built by the Officer-in-Charge for private use where justified by severance agreements or other practical considerations. Title to these structures may or may not be vested in the United States depending upon the agreement with the landowner. Structures built partially or wholly in lieu of severance damages may be required to be maintained by the landowner even though title remains with the United States.

(c) After a project is completed, additional structures crossing or encroaching on project canal, lateral or drain rights-of-way which are needed for private use may be constructed privately in accordance with plans approved by the Officer-in-Charge or by the project. In either case the cost of installing such structures will not be at the project's expense. Such structures will be constructed and maintained under revocable permits on proper forms issued by the Officer-in-Charge of the irrigation project to the party or parties desiring such structures.

(d) If it is determined that a crossing constructed for and by the project is no longer needed for operation and maintenance of the system, it should be removed. However, if a private party, corporation, State, or other Federal entity desires to use the crossing, it may be transferred to such entity by the Officer-in-Charge under a permit which relieves the United States from any further liability or responsibility for the crossing, including its maintenance. The following provisions pertain:

(1) Permits issued in such situations shall stipulate what is granted, and accepted by the permittee on the condition that the repair and maintenance of the structure shall be the duty of the permittee or his successors without cost to the irrigation project.

(2) The permit shall further provide that if any such structure is not regularly used for a period of one year or is not properly maintained, the Officer-in-Charge may notify the person responsible for the structure's maintenance either to remove it or to correct any unsafe conditions within a period of 90 days.

(3) If the structure is not removed or the unsafe condition corrected within the time allowed, it may be removed by the Officer-in-Charge, the cost of such removal to be paid by the party responsible for the maintenance of the structure.

§ 191.10 Fencing.

Fences across project rights-of-way will not be constructed without the approval of the Officer-in-Charge. The granting of such approval shall be dependent upon proper installation so as not to interfere with the flow of water or the passage of project operators and equipment. In case an unauthorized fence is installed, the landowner shall be notified to remove it. If it is not removed within a reasonable period of time or satisfactory arrangements made with the Officer-in-Charge, it may be removed by project personnel at the landowner's expense.

§ 191.11 Obstructions.

No obstructions of any kind including service or farm ditches, will be permitted upon project rights-of-way. Due notice will be given to an operator or landowner to remove any obstructions. If not removed within a reasonable period of time after notice is given, an obstruction will be removed by project forces at the expense of the operator or landowner.

§ 191.12 Rights-of-way.

(a) Rights-of-way reserved for the project's irrigation system are of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance of the project's canals, laterals, and other irrigation works.

(b) In the construction of new irrigation projects or extension of existing projects, rights-of-way which have not been reserved across Indian lands will be obtained in accordance with Part 161 of this chapter.

§ 191.13 Crops and statistical reports.

An annual project crops and statistical report shall be prepared by the Officer-in-Charge. The landowner or farm unit operator shall cooperate in furnishing such information as requested.

§ 191.14 Carriage agreements and water right applications.

(a) *Pine River Indian Irrigation Project, Colorado.* If the Area Director determines that there is sufficient capacity in the project's carriage and/or distribution system in excess of that required by the project, he is authorized to enter into carriage agreements with non-project

water users to convey non-project water through project facilities for delivery to non-project lands.

(b) *Uintah Indian Irrigation Project, Utah.* If the Superintendent determines that there is sufficient capacity in the irrigation project's carriage and/or distribution system in excess of that required by the project, he is authorized to enter into carriage agreements with non-project water users to convey non-project lands. The Superintendent is also authorized to enter into carriage agreements with private irrigation or ditch companies for the conveyance of project water through non-project facilities for delivery to isolated Indian lands that cannot be served from project facilities.

(c) *Wapato Irrigation Project, Washington.* The Project Engineer is authorized to execute water right applications submitted by landowners in the project on behalf of the Secretary of the Interior. Such applications should be submitted on the approved Departmental form.

§ 191.15 Leaching water.

(a) The Officer-in-Charge is authorized to furnish irrigation water for leaching purposes without the payment of operation and maintenance charges to any Indian trust land, or patent in fee land covered by a repayment contract, as an aid to improve land within the project that is impregnated by alkali or in the development of new project land.

(b) Delivery of such water will depend upon the availability of water and the preparation of a definite plan of operation by the land operator satisfactory to the Officer-in-Charge. In addition, the operator shall agree to meet such reasonable leaching and cropping activities as shall be prescribed by the Officer-in-Charge.

(c) If prompt and beneficial use of the leaching water is not made by or before July 1 of the season for which it is granted, the Officer-in-Charge may declare the leaching permit forfeited. The normal water charges will be considered as assessed and any delinquency enforced as though no leaching privilege had been granted.

(d) In the case of patent in fee lands no water will be delivered for leaching purposes until the annual construction costs, when assessed, are paid.

§ 191.16 Excess water.

(a) *General.* On those irrigation projects where a water duty or water quota has been established, each water user will be notified when his quota of water, as covered by the basic assessment and as announced in the public notice, has been delivered. In such cases additional irrigation water, if available, may be delivered providing the water user so requests it and agrees to pay for the excess water in accordance with the excess water provisions as set forth in the public notice.

(b) *Flathead Indian Irrigation Project, Montana.* (1) After an agreement has been reached by the Commissioners of the irrigation district and the Officer-in-Charge as to the duty of water on individual tracts where water users claim excess requirements above the duty of water established for the project on account of porous or gravelly soils, the Officer-in-Charge is authorized to increase the quantity of water to be delivered to such tracts.

(2) The amount of water delivered in such cases will not exceed four (4) acre feet per assessable acre except in the Moiese Division where the amount shall not exceed six (6) acre feet providing there is sufficient water available in Lower Crow Reservoir without having to draw on the water supply for the Mission Valley Division.

(3) The charge for such water shall be at the same general rate as established for project land not having such a porous or gravelly condition.

§ 191.17 Delivery of water.

(a) Irrigation water will not be delivered until the annual operation and maintenance assessments are paid in accordance with the established annual rate schedule as set forth in the public notice issued by the Area Director. Under the following special circumstances, this rule may be waived and water delivered to:

(1) Trust and restricted lands farmed by the Indian owner when the Superintendent has certified that the operator is financially unable to pay the assessment and he has made arrangements to pay such assessments from the proceeds received from the sale of crops or from any other source of income. In such cases the unpaid charges will stand as a first lien against the land until paid but without penalty on account of delinquency.

(2) Non-Indian lands on which there is an approved deferred payment contract executed under the provisions of the Act of June 22, 1936 (49 Stat. 1803).

(3) Land on which an adjustment or cancellation of unpaid assessments has been recommended and final action is pending.

(b) Water will not be delivered to Indian trust or restricted lands that are under lease approved by the Secretary of the Interior or his authorized representative acting under delegated authority until the lessee has paid the annual assessed operation and maintenance charges.

(c) No water will be delivered to Indian trust land under a lease that has been negotiated by an Indian owner until the owner has paid the annual assessed operation and maintenance charges or has made satisfactory arrangements for their payment with the Superintendent who has so notified the Officer-in-Charge.

(d) Water will not be delivered to any lands within an irrigation district which has executed a repayment contract with the United States until all irrigation charges, as assessed, are paid in accordance with the terms and conditions of the contracts and the public notice as issued by the Area Director.

(e) All irrigation districts may make such rules and regulations as they may find necessary in regard to the delivery of the water to water users within the district who are delinquent in their payments to the district of assessed irrigation charges. Such rules and regulations will be adhered to by the Officer-in-Charge when it appears to be in the best interests of the United States and the district to do so.

(f) Water will not be delivered to lands that are subject to construction assessments not paid in accordance with Part 211 of this chapter.

(g) Flathead Indian Irrigation Project, Montana.

(1) *Secretarial Water Right Holders.* (i) For all acres recognized by the Secretary of the Interior as entitled to a "Secretarial Water Right", the Officer-in-Charge is authorized to carry such water in the project's carriage and distribution system and deliver it: *Providing,* The landowner holding such a right requests it and his land is so located that the water can be delivered without undue expense to the project. Before this service is provided, the landowner must also agree to pay a minimum of fifty (50) percent up to a maximum of one hundred (100) percent of the annual operation and maintenance charges as assessed against project lands in the same general area as his. Under such agreement the project will not be obligated to deliver more than that allowed for each acre of land under the Secretary's private water right findings less a proportionate share of the project's normal losses in transporting the water from the point of entry into the project's system to the point of delivery.

(ii) "Secretarial Water Rights" are defined as those rights allocated to Indian allotments by the Assistant Secretary of the Interior by his approval on November 25, 1921, of the findings of the Commission appointed by him to investigate the "private rights" on the Flathead Indian Reservation. Authority: Sec. 9, Act of May 29, 1908 (35 Stat. 449).

(2) *Pump Lands—Flathead Irrigation Project.* (i) The Officer-in-Charge is authorized to deliver irrigation water to lands (pump lands) within a project farm unit that are too high to be served from the project's gravity flow system: *Providing,* The holder of legal title to the lands so requests it in writing and agrees to have such land designated by the Secretary of the Interior or his authorized representative as a part of the irrigation project. Land so designated shall be subject to the assessment and payment of the pro rata per acre share of the project's construction, operation and maintenance costs the same as all other lands within the irrigation project in the same general area. In addition, such "pump lands" shall be obligated to pay an additional assessment on an annual basis as determined by the Officer-in-Charge to defray the cost of pumping the water from the Flathead River for those lands in the Mission Valley Division, and from the Little Bitterroot Lake for lands in the Camas Division.

(ii) At the time he submits the request, the landowner must also agree

in writing to include the "pump lands" in an existing irrigation district or a district that may be subsequently formed pursuant to the laws of the State of Montana. This will not apply to Indian trust or restricted lands as such lands cannot be included within an irrigation district.

(iii) A request for the inclusion of "pump lands" into the project will not be considered until the Officer-in-Charge determines that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project lands for which the project was designed and constructed.

(iv) All costs incidental to the pumping and distribution of the delivered water from the project farm unit delivery point to the "pump lands" shall be borne by the landowner.

§ 191.18 Service or farm ditches.

The service or farm ditches into which water is delivered from project canals or laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to be the place of use with a minimum of loss. Water delivery will be refused to such ditches not satisfactorily maintained. Project irrigation water shall be put to beneficial use.

§ 191.19 Operation and maintenance assessments.

(a) Operation and maintenance assessments will be levied against the acreage within each allotment, farm unit or tribal unit that is designated as assessable and to which irrigation water can be delivered by the project operators from the constructed works whether water is requested or not, unless specified otherwise in this section.

(1) *Colville Indian Irrigation Project, Washington.* Operation and maintenance assessments will be levied against all patent in fee and Indian trust lands to which water can be delivered for irrigation and for which an application for water has been made by the water user and approved by the Superintendent.

(2) *Wapato Irrigation Project-Toppenish-Simcoe Unit, Washington.* Operation and maintenance assessments will be levied against all lands which can be irrigated from the constructed works for which application for water is made annually and approved by the Project Engineer.

(b) Subdivided farm units.

(1) *General.* (i) Where farm units, as defined in § 191.4, have been subdivided into smaller units, the Area Director or such official as he may so delegate may, at his discretion, fix a higher operation and maintenance rate for such subdivided acreage than the rate fixed for the acreage in the original farm unit. In such cases the higher rate will also be announced in the annual public notice.

(ii) In the event higher rates are fixed for a subdivided farm unit, the individual owners thereof may obtain for their lands the same rate as fixed for acreages within farm units not so divided by joining in a written contract with the other owners within the subdivided unit. Under such a contract, the various owners will appoint an agent in whom shall be vested full power and authority to enter into a contract with the Area Director, hereafter referred to as the Contracting Officer, or such official as he may so authorize, covering the water rights for the entire area of the several small acreages: *Provided, however,* Such contract must not represent less acreage than that included in the original farm unit unless a smaller unit has been established by project regulation as eligible for a subdivision contract: *And provided further,* That whether the contract involves acreage in one or more farm units, it must represent contiguous acreages.

(iii) The contract between the agent of the owners of the small tracts and the Contracting Officer shall be executed on or before February 1 of the year preceding the next irrigation season. The agent shall at the time of the execution of this contract, on a form approved by the Secretary of the Interior, furnish a certified copy of the contract executed by the several landowners of the subdivided tract appointing the agent to act in their behalf.

(iv) Any owner of a tract within a subdivided unit, with the written consent of the owners of a majority of the acreage, under a contract as set forth in paragraph (b)(1)(iii) of this section, may voluntarily withdraw from the contract by filing a written notice of his intent to withdraw with the Contracting Officer on or before February 1 of the year, such withdrawal is to be effective, together with the consent of the owners of the majority of the acreage endorsed thereon; *Provided,* That, the remaining acreage is contiguous; such withdrawal does not reduce the remaining acreage under the contract to less than the acreage included in the original farm unit before it was subdivided or less than the minimum acreage established on a project as eligible for a subdivision contract; and all irrigation charges due under said contract have been paid. Upon the receipt of said notice, the Contracting Officer, if the notice meets the requirements as herein provided, shall note his approval thereon and send a copy thereof to the agent of the landowners. Thereafter the land of the withdrawing owner shall no longer be subject to the contract.

(v) If one or more owners under a contract desire to withdraw, and if, by so doing, it would reduce the total remaining contiguous acreage under the contract to less than the total acreage included in the original farm unit, or the minimum eligible acreage established on the project, the contract can be terminated. However, before such a termination can be approved, a written notice from the owners of the majority of the acreage must be filed with the Contracting Officer indicating their consent to and requesting his approval of the termination. The notice must be filed on or before February 1 of the year the termination is to become effective, and must include the payment of any irrigation charges then due under the existing contract. Upon the receipt of the written notice, the Contracting Officer shall note his approval thereon provided that the requirements set forth herein are satisfied. A copy of the approved notice will be given to the agent of the landowners concerned.

(2) *Fort Hall Irrigation Project.* The Superintendent, Fort Hall Agency, is authorized to approve contracts as set forth in this section as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 10 acres.

(3) *Wapato Irrigation Project.* The Project Engineer is authorized to approve contracts as set forth in paragraph (b) of this section, as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 40 acres.

§ 191.20 Water users' ledgers.

(a) Water user's ledgers will be maintained by the Officer-in-Charge on all irrigation projects or units where irrigation assessments are levied and collected. Separate entries shall be made in the ledger for each farm tract, and bills issued to the owner or owners of record. When payment is received, it will be credited to the proper ledger account.

(b) When Indian trust or restricted land is leased and the Officer-in-Charge has been so advised by the Superintendent, irrigation bills will be submitted to the lessee. Upon receipt of payment, it will be credited to the Indian owner or owners of record in the ledger account.

(c) On those projects where irrigation districts have been formed and have executed repayment contracts, irrigation bills will be rendered to the district. When payment is received, it will be credited to the proper ledger accounts.

§ 191.21 Health and sanitation.

Use of Government storage reservoirs, canals, laterals or drains for disposal of sewage and trash shall not be permitted under any circumstances. If such conditions occur, and project forces are unable to correct them, the Officer-in-Charge shall request the Area Director to arrange for the necessary legal action.

§ 191.22 Complaints.

All complaints must be made in writing to the Project Engineer or the Officer-in-Charge of the project.

§ 191.23 Disputes.

In case of a dispute between a water user and the Project Engineer or Officer-in-Charge of the project concerning the application of the regulations of this part or a decision rendered by such official, the water user within 30 days may appeal to the Area Director. Further appeals may be made to the Commissioner of Indian Affairs pursuant to Part 2 of this Chapter.

PART 192—COLVILLE IRRIGATION PROJECT, WASHINGTON—[DELETED]

PART 193—CROW IRRIGATION PROJECT, MONTANA—[DELETED]

PART 194—FLATHEAD IRRIGATION PROJECT, MONTANA—[DELETED]

PART 195—FLATHEAD, MISSION, AND JOCKO VALLEY IRRIGATION DISTRICTS, MONTANA—[DELETED]

PART 196—FORT BELKNAP IRRIGATION PROJECT, MONTANA—[DELETED]

PART 197—FORT HALL INDIAN IRRIGATION PROJECT, IDAHO—[DELETED]

PART 198—FORT PECK INDIAN IRRIGATION PROJECT, MONTANA—[DELETED]

PART 199—UINTAH IRRIGATION PROJECT, UTAH—[DELETED]

PART 200—WAPATO IRRIGATION PROJECT, WASHINGTON—[DELETED]

PART 201—WIND RIVER IRRIGATION PROJECT, WYOMING—[DELETED]

2. Parts 192–201 of Subchapter R, Chapter I, Title 25 of the Code of Federal Regulations are hereby deleted.

PART 221—OPERATION AND MAINTENANCE CHARGES

3. When new assessment rates and related information are announced by general notice in the FEDERAL REGISTER, the corresponding section of Part 221 will be deleted.

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

RAYMOND V. BUTLER,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.77-16866 Filed 6-13-77;8:45 am]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Subpart D—Special Target Group and Youth Programs and Other Special Programs

PROGRAM AGREEMENTS WITH PRIVATE PROFITMAKING ORGANIZATIONS

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: This rule amends requirements governing the award and administration of program funding agreements with private, profitmaking organizations under sections 301 and 304 of title III of the Comprehensive Employment and Training Act of 1973. Under the current regulations the Department's policy has been to apply the General Services Administration's regulations governing the procurement of property and services from commercial sources to funding agreements with private, profitmaking organizations under sections 301 and 304. The General Services Administration regulations, however, were designed for use in the procurement of such things as typewriters, stationery, and guard services. It is evident that the "procurement" of employment and training activities is not procurement in the true sense of the word.

The purpose of this amendment is to enable the Department of Labor to use simpler and more appropriate methods whenever a program under section 301 or 304 does not primarily involve the procurement of property or services in the true sense of the word. Consistent with the policy of the Department of Labor to encourage increased private sector involvement in Federal employment and training programs, the intent of this amendment is to create conditions under which private employers will be more willing to participate in Department of Labor programs designed to help the unemployed, the underemployed, and the economically disadvantaged to prepare for and obtain gainful employment.

EFFECTIVE DATE: July 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Steven K. Puterbaugh, Office of National Programs (OCED), Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20213 (202–376–6093).

SUPPLEMENTARY INFORMATION:

REGULATIONS AFFECTED

In the FEDERAL REGISTER of March 12, 1976 (41 FR 10774), the Department of Labor published regulations governing employment and training programs for special target groups, youth programs, and other special programs authorized by sections 301 and 304 of title III of the Comprehensive Employment and Training Act of 1973, as amended (Pub. L. 93–203, 87 Stat. 839; Pub. L. 93–567, 88 Stat. 1845; and Pub. L. 94–444, 90 Stat. 1476).

These regulations were codified as a new Subpart D to 29 CFR Part 97. This rule amends certain provisions in Subpart D.

LEGAL AUTHORITY

Section 702(b) of the Comprehensive Employment and Training Act states, in part:

> The Secretary may make such grants, contracts, or agreements, establish such procedures (subject to such policies, rules, and regulations as he may prescribe) * * * as he may deem necessary to carry out the provisions of this Act * * *.

Under this statutory provision, the Secretary of Labor is empowered to provide financial assistance for employment and training programs undertaken by private, profitmaking organizations and to prescribe the rules and conditions under which such assistance is given.

EFFECTS OF THIS REGULATION

This rule amends 29 CFR Part 97, Subpart D, by revising § 97.309 (b) and (c). The effect of this revision is to change the Secretary's policy by making the use of formal competition discretionary rather than mandatory when the Department gives financial assistance for programs conducted by private, profitmaking organizations. It will, however, remain the policy of the Department of Labor to use competitive procedures whenever competition is in the best interests of the Government and whenever the award of funds is a bona fide procurement transaction for which sole-source contracting is inappropriate.

This rule also amends 29 CFR Part 97, Subpart D, by revising § 97.311(c)(13). The effect of this revision is to lift the strict requirement that proposals or funding applications submitted by nongovernmental organizations be accompanied by a description of the general structure of the organization and a signed statement by a Certified Public Accountant attesting to the adequacy of the applicant's or proposer's financial management system. The new language, however, permits the Secretary of Labor to require these items whenever he or she perceives a need for them.

This rule also amends 29 CFR Part 97, Subpart D, by revising § 97.312(b) and deleting and reserving § 97.312 (c). The effect of the revision and the deletion is to permit the Secretary of Labor to consider unsolicited proposals and applications for program funding under sections 301 and 304, including those submitted by private, profitmaking organizations.

This rule also amends 29 CFR Part 97, Subpart D, by revising § 97.315(g). The effect of this revision is to give the Secretary of Labor discretion in selecting the legal instrument used to award financial assistance for programs conducted by private, profitmaking organizations. Until this time, the only instrument permitted was the contract. The Secretary will now be able to use a contract, grant, or other instrument, whichever is most appropriate in view of the nature of the agreement.

This rule also amends 29 CFR Part 97, Subpart D, by revising § 97.335(c). The effect of this revision is to change the Secretary's policy so that funding agreements which are made on a fixed price or fixed unit price basis will be exempted from the cost principles of the General Services Administration's procurement regulations at 41 CFR, Chapter 1, Subpart 1–15.2.

This rule also amends 29 CFR Part 97, Subpart D, by revising § 97.381. The effect of this revision is to remove the mandatory requirement that all program agreements with private, profitmaking organizations be subject to the Federal Procurement Regulations at 41 CFR Chapter 1. The Secretary of Labor will, however, continue to apply the Federal Procurement Regulations whenever the award of Federal funds is a bona fide procurement transaction.

TECHNICAL AMENDMENTS

Citation corrections are being made in §§ 97.324, 97.327, and 97.330.

EXEMPTIONS FROM RULEMAKING PROCEDURES

As these amendments relate to public property, loans, benefits, or contracts,

they have been excepted from the notice and comments provisions of the Administrative Procedure Act, 5 U.S.C. 553(a)(2). The general policy of the Department of Labor, as stated in 29 CFR 2.7, is not to use this exception as a basis for not giving opportunity for notice and comment before the publication of a final regulation. In this case, however, in view of the immediate need of unemployed, underemployed, and economically disadvantaged persons for job and training opportunities in the private sector, the Department has determined that it is in the public interest that these amendments not be delayed for the preparation, receipt, and evaluation of comments.

Although these amendments are being issued in final form, it remains the policy of the Department of Labor to solicit and consider comments on its regulations. Therefore, comments pertaining to these amendments will be received just as though this document were a proposal until 30 days after publication. The comments that are received during this period will be evaluated to determine if subsequent amendments are warranted. Meanwhile, the rules in this document shall remain in force.

Interested persons are invited to submit comments, data, or arguments to: Assistant Secretary for Employment and Training, United States Department of Labor, 6th and D Streets, NW., Washington, D.C. 20213. Attention: Administrator, Office of Comprehensive Employment Development.

Accordingly, 29 CFR Part 97, Subpart D, is amended as follows:

1. In § 97.309, paragraph (b) is revised by deleting the phrase "except under conditions described in paragraph (c) of this section", and paragraph (c) is revised to read as follows:

§ 97.309 Soliciting applications for Federal funds.

* * * * *

(c) When soliciting proposals from private, profitmaking organizations, the Secretary may issue a formal Request for Proposal.

2. In § 97.311, paragraph (c)(13) is revised to read as follows:

§ 97.311 Proposal or application format and content.

* * * * *

(c) * * *

(13) If the applicant or proposer is an organization other than an agency of government and if requested by the Department, a description of the general structure of the organization and a certified statement by a Certified Public Accountant attesting to the adequacy of the applicant's or proposer's financial management system.

3. In § 97.312, paragraph (b) is revised to read as follows and paragraph (c) is deleted and reserved:

§ 97.312 Review.

* * * * *

(b) The Secretary may review and consider for approval or acceptance any unsolicited proposal or application for funds submitted by an eligible organization.

(c) [Reserved]

4. In § 97.315, paragraph (g) is revised to read as follows:

§ 97.315 Award.

* * * * *

(g) When the program sponsor is a private, profitmaking organization, the Secretary will determine the most appropriate instrument (contract, grant, or other type of agreement) to implement the program and award Federal funds.

§ 97.324 [Amended]

5. In § 97.324, the citation "§ 95.36" is corrected to read "§ 95.37."

§ 97.327 [Amended]

6. In § 97.327, the citation "§ 95.35" is corrected to read "§ 95.36."

§ 97.330 [Amended]

7. In § 97.330, the citation "40 U.S.C. 27a–5" is corrected to read "40 U.S.C. 276a—276a–5."

§ 97.335 [Amended]

8. In § 97.335, paragraph (c) is revised by adding at the end, thereof, the following clause: "except when the program agreement provides that payments to the program sponsor will be made on a fixed price or fixed unit price basis."

9. The heading that appears immediately before § 97.381 and § 97.381 itself, are revised to read as follows:

ADMINISTRATIVE STANDARDS FOR PROGRAM AGREEMENTS WITH PRIVATE, PROFITMAKING ORGANIZATIONS

§ 97.381 Administration.

Administrative standards and requirements for private, profitmaking organizations that are awarded program agreements under this subpart will be included in the terms and provisions of the program agreements.

Signed at Washington, D.C., this 26th day of May 1977.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc.77-16934 Filed 6-13-77;8:45 am]

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Supplements to Vermont Plan; Correction

AGENCY: Occupational Safety and Health Administration.

ACTION: Correction.

SUMMARY: This document contains a correction to the description of Vermont's public sector programs which appeared in the approval notice for the public sector programs (FR Doc. 77–5778, 42 FR 10988, Feb. 25, 1977).

FOR FURTHER INFORMATION CONTACT:

Rrencie McGlown, Project Officer, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–8031.

SUPPLEMENTARY INFORMATION: On February 25, 1977, the FEDERAL REGISTER published a notice of approval of supplements to the Vermont State plan (42 FR 10988). The description of Vermont's public sector programs supplement contained an erroneous statement. As corrected, the last sentence of paragraph 2(b) of the above notice reads as follows: "Vermont's public sector programs provide coverage of employees of State and local governments in a manner identical to that of private employees and meet all of the requirements of § 1952.11".

Signed at Washington, D.C., this 7th day of May 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-16936 Filed 6-13-77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 205—DUMPING GROUNDS REGULATIONS

Revocation of Dumping Grounds Regulations

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: We are hereby revoking Department of the Army regulations that specify dumping grounds for the disposal of various materials in the waters of the United States and the oceans. This action is being taken since these regulations are no longer consistent with recent legislation.

EFFECTIVE DATE: This revocation will become effective June 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph T. Eppard, Office of the Chief of Engineers, (DAEN–CWO–N) Washington, D.C. 20314. (202–693–5070).

SUPPLEMENTARY INFORMATION: Since 1954, the Chief of Engineers has promulgated various regulations under Part 205 of Title 33 of the Code of Federal Regulations that establish and govern the use of dumping grounds at certain specified locations in waters of the United States and in the oceans. These dumping ground regulations were established under various authorities, including 33 U.S.C. 1, the River and Harbor Act of 1899 (33 U.S.C. 401 et seq.), and the Supervisor of the Harbors Act of 1888 (33 U.S.C. 441 et seq.). The dumping grounds have been used for the disposal of dredged material and refuse matter of various types, and were prescribed at cer-

tain locations solely in the interest of protecting navigation.

Congress enacted the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1151 et seq.) to regulate the discharge of pollutants into the waters of the United States. The discharge of pollutants into the waters of the United States is prohibited by section 301 of the FWPCA (33 U.S.C. 1311) unless a permit is issued by EPA (or a State to whom EPA has delegated the program) (33 U.S.C. 1342) or by the Secretary of the Army, acting through the Chief of Engineers, in the case of dredged or fill material under section 404 (33 U.S.C. 1344). Each permit application must be evaluated using appropriate EPA criteria and guidelines, and each permit that is issued specifies the disposal site into which the pollutants will be discharged.

In 1972, Congress also enacted the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 et seq.). That Act establishes a regulatory program similar to that specified in the FWPCA for the dumping of various materials into the oceans. Under the MPRSA, EPA regulates the dumping of all material, except dredged material, into the oceans through a permit program established under section 102 (33 U.S.C. 1412). Section 102 of the Act also requires the Administrator of EPA to promulgate criteria to be used in the evaluation of the various materials to be dumped into the oceans, and in the designation of recommended disposal sites for the dumping of these materials. Further criteria are specified in the Convention on the Prevention of Marine Pollution by Dumping of Waste or Other Matter, to which the U.S. is a signatory party. On 11 January 1977, EPA revised the criteria to be used to evaluate the materials to be dumped in the oceans, and to designate recommended dumping sites (42 FR 2462).

Section 103 of the MPRSA (33 U.S.C. 1413) vests responsibility in the Secretary of the Army to issue permits for the dumping of dredged materials into the oceans. (See 33 CFR 209.120). Section 103 also requires similar review procedures to be applied to Corps projects involving the ocean dumping of dredged material. (See 33 CFR 209.145). Pursuant to this section, each Federal project and each permit application are evaluated by using the aforementioned EPA criteria, and the Secretary is required to utilize EPA recommended dump sites to the maximum extent feasible. In the event that an EPA dump site cannot be so utilized, EPA criteria requires the Secretary to evaluate an alternative dump site using the same criteria that EPA uses in the designation of its recommended dump sites.

Both the FWPCA and the MPRSA vest certain veto authority in EPA over a designated disposal site for the discharge of dredged or fill material into the waters of the U.S., or the dumping of dredged material in the oceans.

The foregoing clearly indicates that the dump sites described in Part 205 have been overtaken by other legal requirements and are no longer appropriate for use. In view of this, notice of proposed rulemaking and public procedures related thereto to rescind Part 205 of Title 33 of the Code of Federal Regulations is considered to be unnecessary. 33 CFR Part 205 is hereby revoked in its entirety as set forth below.

NOTE.—The Department of the Army has determined that this document does contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

PART 205—DUMPING GROUNDS REGULATIONS—[REVOKED AND RESERVED]

(33 U.S.C. 1151 et seq., 33 U.S.C. 1401 et seq.)

Dated: June 1, 1977.

CHARLES R. FORD,
Acting Assistant Secretary of the Army, Civil Works.

[FR Doc.77-16806 Filed 6-13-77;8:45 am]

Title 40—Protection of Environment

[FRL 741-8]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Maine Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Disapproval of a proposed implementation plan revision.

SUMMARY: EPA is disapproving a revision to the Maine State implementation plan which would exempt wood waste cone burners from the existing incinerator particulate emission limitations. Because violations of the National Ambient Air Quality Standards for particulates could occur if this revision were approved, wood waste cone burners must still comply with the existing regulation.

EFFECTIVE DATE: July 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Wallace Woo, Air Branch, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Mass. 02203 (617-223-5609).

SUPPLEMENTARY INFORMATION: On May 31, 1972 37 FR 10870), pursuant to Section 110 of the Clean Air Act and to 40 CFR Part 51, the Administrator approved with exceptions the Maine Implementation Plan for the attainment of National Ambient Air Quality Standards (NAAQS).

On February 23, 1977, there was published in the FEDERAL REGISTER (42 FR 10699) a proposal to exempt wood waste cone burners from the incinerator particulate emission limitations (Regulation 100.4 of the Maine Air Pollution Control Regulations) until June 1, 1980. This proposed revision to the Maine State Implementation Plan (SIP) was submitted by the Maine Department of Environmental Protection (the Maine DEP) on August 26, 1976. EPA reviewed the technical support documentation which accompanied the revision and found that it did not provide conclusive analyses to show that the change would not interfere with the attainment and maintenance of NAAQS for particulate matter. EPA performed additional calculations which demonstrated that violations of the NAAQS for total suspended particulates (TSP) could occur if the revision were approved. EPA's evaluation included a determination of how the dispersion characteristics of wood waste cone burners differ from the more usual air pollution point sources, and estimates of where and under what meteorological conditions cone burners would have peak impacts. Downwash is believed to be a significant dispersion mechanism for cone burners. Since plume rise may be minimal and cone burners are not very high, entrainment of the plume in the burner's wake is possible. EPA's analysis showed that for a cone burner operated over a 24-hour period under downwash conditions, concentrations exceeding the secondary NAAQS might occur at distances up to 2,100 meters from the facility, depending on the specific source and meteorological conditions considered.

During the 30-day comment period, comments were received from two sawmills, a State legislator and a trade association. All commenters urged approval of the revision.

Three commenters noted that alternative disposal methods are not available. EPA is aware that the improper disposal of bark can result in a solid waste disposal problem. The State of Maine has developed and published guidelines for the disposal of wood product wastes on land. It should also be noted that because of our mounting energy problems, many firms are beginning to utilize these wastes as energy sources. EPA is optimistic that programs of this type can be implemented and be compatible with our environmental concerns as well. Such resource recovery techniques, properly operated, represent significant improvements in air pollution control over that achievable using cone burners.

Two commenters pointed out that the wood waste cone burners are located in areas away from population centers. However, since air quality standards are set to protect the health and welfare of all people, standards violations cannot be permitted. Even though the cone burners are located in sparsely populated areas, there is the possibility that people will be exposed to harmful levels of particulate matter.

One of the commenters also indicated that the cone burners at their facilities could in fact comply with the existing incinerator regulation. Upon start up of a wood waste-fired boiler now being installed at one of the facilities, the amount of wood waste to be disposed of in the cone burners will be sufficiently reduced so as to allow operation of the cone burners within the emission limitations. EPA feels that this lends further support to its position that the existing

regulation is reasonable and should continue to apply to wood waste cone burners.

Another point raised was why Maine's incinerator particulate emission standard is so much more restrictive than its standards for general process emissions. In general, emission limitations are based on the degree of control achievable by an emission source category and the degree of control necessary to attain and maintain the NAAQS. The particulate control strategy in the SIP was selected by the State as the optimal way, taking economics into account, of obtaining needed emission reductions. EPA is limited to considering SIP revisions as submitted by the States. Therefore, a broad change in the incinerator particulate emission limitations would have to be initiated by the Maine DEP and submitted as another SIP revision for EPA review.

After evaluation of the State's submittal and EPA calculations, the Administrator has determined that the Maine revision does not meet the requirements of the Clean Air Act as amended and 40 CFR Part 51. Therefore, this revision to the Maine SIP is disapproved.

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

Dated: June 7, 1977.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc.77-16773 Filed 6-13-77;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5618; UT-0143106]

UTAH

Partial Revocation of Withdrawal for Fort Douglas Military Reservation

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This order revokes a prior withdrawal to make certain lands available to the State.

EFFECTIVE DATE: June 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes (202-343-8731).

By virtue of the authority contained in section 204 of the Act of October 21, 1976, 90 Stat. 2743, it is ordered as follows:

1. The Executive Order of September 3, 1867, withdrawing lands for military purposes, is hereby revoked insofar as it affects the following described lands:

SALT LAKE MERIDIAN

T. 1 S., R. 1 E.,
Secs. 4 and 9, Tract L, Parcels 1 and 2.

The area described contains 24.50 acres according to the official supplemental plat of survey approved December 2, 1976. The lands lie within the limits of Salt Lake City, Salt Lake County.

2. Upon promulgation of this order, parcel 1 of the above described lands will be made available to the State of Utah as a quantity grant; parcel 2 will be made available to the city of Salt Lake under the Recreation and Public Purposes Act.

GUY R. MARTIN,
Assistant Secretary of the Interior.

MAY 27, 1977.

[FR Doc.77-16930 Filed 6-13-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Editorial Amendments Concerning Organization of the Office of Chief Engineer

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Part 0 of the Commission's Rules and Regulations amended to add a new Spectrum Allocation Division to the Office of the Chief Engineer and delete from the same office the Spectrum Allocations Staff and the Spectrum Management Task Force. Implements the reorganization of the Office of Chief Engineer approved by the Commission on April 12, 1977. Completes the realignment of land mobile spectrum management responsibilities among the FCC bureaus.

EFFECTIVE DATE: June 22, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mr. Bernard I. Kahn, Management Systems Division, 632-7513.

SUPPLEMENTARY INFORMATION:

Adopted: June 6, 1977.

Released: June 9, 1977.

In the matter of Amendment of Part 0, Subpart A of the Commission's Rules and Regulations concerning organization of the Office of Chief Engineer.

1. On April 12, 1977 the Commission approved the establishment of a new Spectrum Allocation Division in the Office of Chief Engineer to improve the organizational structure and strengthen the spectrum management responsibilities following the transfer of the majority of Chicago Region land mobile spectrum management functions to the Safety and Special Radio Services Bureau.

2. The existing Spectrum Allocations Staff is being abolished and a new Spectrum Allocation Division is established with expanded functions. The reorganization will enable the Chief Engineer to concentrate greater efforts in the vital area of domestic spectrum allocation and management and thus enable the Commission to function more effectively in that area.

3. This Order is issued to designate and establish the new division and revise the rules accordingly.

4. Authority for this action is contained in Sections 4 (i) and (j) and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j) and 303(r) and § 0.231(d) of the Rules and Regulations, 47 CFR 0.231(d). Because the amendments are editorial and procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 do not apply.

5. Accordingly, *it is ordered*, That effective June 22, 1977 Part 0 of the Commission's Rules and Regulations is amended as set forth below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director,

The functions of the Office of Chief Engineer are amended as follows:

§ 0.31 [Amended]

1. Paragraph (m) is deleted in its entirety.

§ 0.32 [Amended]

2. In § 0.32, paragraph (e) is amended to read "Spectrum Allocation Division".

§ 0.33 [Amended]

3. In § 0.33, paragraph (b) (1) through (6) is deleted in its entirety.

4. In § 0.38, the headnote and text are amended to read as follows:

§ 0.38 Spectrum Allocation Division.

The Spectrum Allocation Division has the following duties and responsibilities:

(a) Plan, develop, and recommend to the Commission the domestic allocation or re-allocation of electromagnetic spectrum to non-Government radio services.

(b) Develop and recommend to the Commission regulations and policies to promote the more efficient use of the spectrum and to minimize harmful interference between services.

(c) Identify and foster the introduction of new and innovative uses of radio and radio technology consistent with the public interest.

(d) Develop and implement, or propose for implementation, improved analytical tools and administrative procedures, including proposed legislation where necessary, to ensure more efficient allocation and administration of the radio spectrum.

(e) Conduct engineering, economic, legal, social and statistical studies and analyses, and prepare internal or published Commission reports on the results of such studies.

(f) Identify the need for and develop essential spectrum data files and computer software, in coordination with the Data Automation Division and other Offices of the Commission.

(g) Draft and coordinate Commission rule making items and public notices of inquiry pertaining to changes in the U.S. Table of Frequency Allocations, Part 2 of the Commission's Rules.

(h) Meet with members of industry, Congress, other Federal agencies, and the general public concerning domestic spectrum allocation matters.

(i) Represent the Commission at industry and/or Government sponsored conferences, committees and seminars.

(j) Advise the Commission and its staff on technical and policy questions pertaining to domestic spectrum allocation and use.

§ 0.242 [Deleted]

5. Section 0.242 is deleted in its entirety.

[FR Doc.77-16888 Filed 6-13-77;8:45 am]

[Docket No. 20900; RM-2657]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Hobart, Okla.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken assigning a Class C FM channel to Hobart, Oklahoma, and deleting a Class A FM channel. Petitioner, Fuchs Broadcasting Company, states the substitution would provide for an FM station which could render significantly more first and second FM service in addition to first and second nighttime aural service than the presently assigned Class A channel.

EFFECTIVE DATE: July 15, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

Adopted: June 1, 1977.

Released: June 8, 1977.

In the matter of amendment of § 73.-202(b), table of assignments, FM broadcast stations. (Hobart, Oklahoma). *Report and order* (Proceeding Terminated).

By the Chief, Broadcast Bureau:

1. The Commission has under consideration its *Notice of Proposed Rule Making*, adopted August 25, 1976, 41 FR 37346, inviting comments on a proposal to assign Channel 290 (Class C) to Hobart, Oklahoma, and deleting Channel 257A. This proceeding was instituted on the basis of a petition filed by Fuchs Broadcasting Company ("petitioner"). There were no oppositions filed to the proposal. Supporting comments were filed by petitioner.

2. Hobart (pop. 4,538), seat of Kiowa County (pop. 12,532)[1], is located approximately 153 kilometers (95 miles) southwest of Oklahoma City and 72 kilometers (45 miles) north of the Texas-Oklahoma boundary. Hobart is served by daytime AM Station KTJS, which is licensed to petitioner.

3. Petitioner states that Hobart, as well as the surrounding large rural area, is in need of a Class C channel so that residents will be able to hear important early morning school announcements, weather information, and road condition reports. Petitioner points out that its daytime AM station has presunrise authority but that its service coverage is very limited during pre-sunrise operation.

4. Channel 290 could be assigned to Hobart, Oklahoma, in conformity with the minimum distance separation requirements. The proposed assignment would preclude some otherwise possible uses of Channels 288A, 289, 290, 291 and 292A. However, in the precluded areas, there is no community with a population exceeding 4,500 which is presently without an FM assignment; and within these areas, there are a number of assigned channels available for use. In addition, the areas precluded from the use of Channels 287 and 293 have a small number of communities without an FM assignment, but most of these communities have populations under 1,000. Within the Channel 287 preclusion, no community has a population greater than 3,500. Also, in the area precluded from the use of Channel 293, there are three unoccupied channels. Although this amount of preclusion is not unimportant, any concern about it is resolved by the service this proposal would provide.

5. In response to the Notice, petitioner submitted a Roanoke Rapids, 9 F.C.C. 2d 672 (1967), and Anomosa-Iowa City, 46 F.C.C. 2d 520 (1974), showing which indicated that assuming Channel 290 to be operating with facilities of 25 kilowatts and an antenna height of 299.4 meters (982 feet), a first FM service would be provided to an area of 3,432 square kilometers (1,320 square miles) with a population of 11,692 and a second FM service to an area of 3,566 square kilometers (1,360 square miles) with a population of 38,998. A first aural service would be provided to 4,692 persons in an area of 1,375 square kilometers (530 square miles) and second aural service to 7,000 persons in an area of 2,050 square kilometers (790 square miles). In comparison, a Class A station operating in Hobart would provide a first FM service to an area of 1,128 square kilometers (420 square miles) with a population of 7,193 and a second FM service to an area of 679 square kilometers (260 square miles) with a population of 2,584.

6. The proposed substitute channel would provide for an FM station which could render significantly more first and second FM service in addition to first and second nighttime aural service than the presently assigned Class A channel. In light of this and since it has been shown that there is no community in the preclusion areas with a population exceeding 4,500 persons which is presently without an FM assignment, and that within these areas there are a number of communities with assigned channels not presently in use, the public interest would be served by the change in channel assignment.

7. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

8. In view of the foregoing, *It is ordered*, That effective July 15, 1977, § 73.-202(b) of Commission's Rules, the FM Table of Assignments, as regards Hobart, Oklahoma, is amended as follows:

City	Channel No.
Hobart, Okla.	[1] 290

[1] Any application for this channel must specify an effective radiated power of 25 KW and antenna height of 290 meters (950 feet) above average terrain or their equivient.

9. *It is further ordered*, That this proceeding is terminated.

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

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

[FR Doc.77-16890 Filed 6-13-77;8:45 am]

[Docket No. 21126; RM-2720]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Placerville and Grass Valley, Calif.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken assigning a first Class A FM channel to Placerville, California, and substituting Channel 232A for Channel 221A at Grass Valley, California. Petitioner, Hangtown Broadcasters, states that this action will provide Placerville with an opportunity to acquire its first local aural broadcast service.

EFFECTIVE DATE: July 20, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, Policy and Rules Branch, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: June 2, 1977.

Released: June 9, 1977.

[1] Both population figures are taken from the 1970 U.S. Census.

In the Matter of amendment of § 73.-202(b), Table of Assignments, FM Broadcast Stations. (Placerville and Grass Valley, California).

By the Chief, Broadcast Bureau:

1. The Commission has under consideration its *Notice of Proposed Rule Making*, adopted February 23, 1977, 42 FR 12896. The subject proposal filed by David W. Evans and Paul E. Gregg, d/b/a Hangtown Broadcasters ("petitioner") involves the assignment of FM Channel 221A to Placerville, California, as its first FM assignment, and deleting Channel 221A [1] and replacing it with Channel 232A at Grass Valley, California. Supporting comments and reply comments were filed by petitioner. Comments in opposition were filed by Carroll E. Brock, d/b/a Nevada County Broadcasters ("NCB"), and Jack J. Lawson, d/b/a Mother Lode Broadcasting Company ("Lawson").

2. Placerville (pop. 5,416) [2], seat of El Dorado County (pop. 43,833), is located in northern California, approximately 64 kilometers (40 miles) east of Sacramento and 173 kilometers (108 miles) northeast of San Francisco, California. It has no local aural broadcast service. In order for the Channel 221A station at Placerville to comply with the minimum separation requirement of 64 kilometers (40 miles) to Station KFBK-FM (Channel 223) at Sacramento, a transmitter site would be required to be located 3 kilometers (1.9 miles) east of Placerville. As to Channel 232A at Grass Valley, a site located 3 kilometers (1.9 miles) north of the community would be required in order to meet the spacing requirement of approximately 105 kilometers (65 miles) to Station KNGT operating on the same channel at Jackson, California.

3. The *Notice* sets forth the information establishing the need for a first FM assignment to Placerville and therefore will not be repeated here. In supporting comments petitioner reaffirmed its intention to apply for the channel if assigned, and, if authorized, to build the station promptly. The *Notice* requested the petitioner to submit a showing as to the preclusionary effect of assigning Channel 221A to Placerville upon the future assignment of educational stations on Channels 218, 219, and 220. Responding to the *Notice*, petitioner noted that ten communities [3] would be precluded from using Channel 220, and no cities with a population of 1,000 or more within a 15-mile radius of Placerville would be precluded from using Channels 218 and 219.

4. In opposing comments NCB contends that, in requiring the site to be located north of the community, the Commission has overlooked the serious terrain problems involved in the selection of a transmitter site from which a radio station would be able to provide service to Grass Valley and eastern Nevada County, the natural service area of a Grass Valley FM station. NCB states that the site proposed in its application for Channel 221A to Grass Valley is not available for use on Channel 232A if the Commission's separation rules were to be rigorously enforced. It adds that all other sites which would comply with the 105 kilometer (65 mile) separation requirement from Station KNGT, Jackson, would be separated from Grass Valley by terrain barriers which would produce shadowing over the principal community. NCB submits three alternatives which, it states, would not result in an inferior assignment at Grass Valley: (1) assignment of Channel 232A to Grass Valley, stipulating Banner Mountain as its site, but which is short-spaced to Station KNGT; (2) select a different channel for assignment to Placerville so a substitute channel would not be necessary at Grass Valley; or (3) order Station KNGT to switch its operation to another channel so that Grass Valley would not be short-spaced to the Jackson station and to require the Placerville permittee to reimburse the cost of KNGT's modification. NCB asserts that, if none of these alternatives are chosen, the Placerville assignment should not be made since it would result in a loss of the public interest benefits inherent in the first FM assignment recently made to Grass Valley.

5. Lawson contends that, with the knowledge of the Placerville petition in mind, he has made a concerted effort to find a suitable site from which a Channel 232A FM station would be able to provide a viable FM service to Grass Valley, that the availability of effective FM transmitter sites in the mountainous area of Grass Valley are not numerous, and that his proposed site is most suitable, if not ideal, for service to Grass Valley and the adjacent community of Nevada City. Lawson asserts that he is not in opposition to the assignment of an FM channel to Placerville if such assignment would not serve to defeat his application for Grass Valley, and states that he will agree to a slightly short-spaced channel at Grass Valley if the Placerville petitioners have exhausted all efforts to find an alternative channel for Placerville and if the Commission will modify his application for the new Grass Valley channel. He observes that a final search revealed that there may be another site which, a preliminary estimate indicates, would comply with the spacing requirements to Station WNGT at Jackson.

6. Upon consideration of the comments submitted by the parties, the Commission believes that the adoption of the proposal herein would be in the public interest. One of the Commission's objectives is to provide every community with a local aural broadcast service, which Placerville does not have. In order to accomplish that end and in view of the saturation of FM assignments in this area, there must be some interchange in the channel assignments. The Grass Valley applicants suggest that they be permitted to employ the sites presently proposed in their Channel 221A applications for the Channel 232A operation, which would be short-spaced by about a mile to station KNGT. The making of assignments that would be short-spaced is not consistent with maintaining the integrity of the FM allocation plan, see *Portland, Tennessee*, 35 F.C.C. 2d 601 (1972). Nor is there any need for this to be the result of our action here. Although the change in the assignment would cause some inconvenience to the Grass Valley applicants, our study shows that they should be able to find suitable transmitter sites which would comply with the spacing requirements without suffering significant shadowing problems. *Richlands, Virginia*, 42 F.C.C. 2d 727 (1973). There is an area within 1.6 kilometers (1 mile) of the applicants' sites, *albeit*, at slightly lower elevation than the applicants' presently proposed sites, from which the FM stations should be able to provide the type of broadcast service envisioned by the applicants to Grass Valley and Nevada City.

7. In view of the above and since an alternate channel for Placerville is unavailable, it would be in the public interest to substitute Channel 232A for Channel 221A at Grass Valley and to assign Channel 221A to Placerville, California. The assignment of Channel 221A to Placerville will not foreclose future assignments of educational FM stations on Channels 218, 219 and 220 because the use of these channels is already precluded by existing assignments. The assignment of an FM channel to Placerville will provide the community with an opportunity to acquire its first local aural broadcast transmission service.

8. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

9. In view of the foregoing, *It is ordered*, That effective July 20, 1977, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, as regards the communities listed below, is amended as follows:

City	*Channel No.*
Grass Valley, Calif.	232A
Placerville, Calif.	221A

10. *It is further ordered*, That this proceeding is terminated.

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

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

[FR Doc.77-16889 Filed 6-13-77;8:45 am]

[1] Two applications are pending for Channel 221A at Grass Valley: Nevada County Broadcasters (BPH-10442) and Mother Lode Broadcasting Company (BPH-10469). They will need to be amended to specify Channel 232A and to make the other changes discussed in paragraph 6.

[2] All population figures cited are taken from the 1970 U.S. Census.

[3] *California:* Folsom, Roseville, Auburn, Colfax, Jackson, Sutter Creek, Ione, Lincoln, Newcastle and Rocklin. However, this area is already precluded by existing operations.

Title 50—Wildlife and Fisheries

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

PART 32—HUNTING

Opening of Kirwin National Wildlife Refuge, Kansas, to Hunting of Deer With Bow and Arrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to archery hunting for deer of Kirwin National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1977, through November 30, 1977, inclusive, and December 17, 1977, through December 31, 1977, inclusive.

FOR FURTHER INFORMATION CONTACT:

Keith S. Hansen, P.O. Box 125, Kirwin, Kansas 67644. Telephone 913-646-2373.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual refuge areas.

The public hunting of deer with bow and arrow on the Kirwin National Wildlife Refuge, Kansas is permitted on the areas designated by signs as "open" to hunting. These areas comprising 3,700 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Hunting shall be in accordance with all applicable State regulations governing the archery hunting of deer.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1977. The public is invited to offer suggestions and comments at any time.

The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

KEITH S. HANSEN,
Refuge Manager.

MAY 17, 1977.

[FR Doc.77-16780 Filed 6-13-77;8:45 am]

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

PART 285—ATLANTIC TUNA FISHERIES

Bluefin Tuna Regulations

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Final rulemaking.

SUMMARY: National Marine Fisheries Service promulgates final regulations to implement conservation measures on Atlantic bluefin tuna for 1977. These regulations set forth annual catch quotas, seasons, reporting requirements, and inspection requirements for U.S. vessels.

EFFECTIVE DATE: June 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, 617-281-3600.

SUPPLEMENTARY INFORMATION: On April 29, 1977, the National Marine Fisheries Service published proposed rules in the FEDERAL REGISTER (42 FR 21825) to implement conservation measures for the 1977 Atlantic bluefin tuna season. A public hearing was held on May 16 to provide interested persons an opportunity to express their views and opinions on the proposed regulations. In addition, written comments were accepted until May 27, 1977.

DISCUSSION OF MAJOR COMMENTS

As a result of the public hearing and written comments, the National Marine Fisheries Service has concluded that a number of changes from the proposed rules are warranted.

QUOTAS

Several commenters suggested that the annual quota provided for the area south of Gay Head Light, Massachusetts, be added to the area quota north of Gay Head Light, or that the unused portions of the area quota south of Gay Head Light be added to the next year's quota for the area north of Gay Head Light. The Service feels that the present distribution of area quotas for Atlantic bluefin tuna is most equitable among the various user groups in the areas north and south of Gay Head Light. The Service also feels that rather than increase next year's quota by any unused portion of an area quota, an attempt will be made to reallocate any unused portion to other areas during the same year.

INCIDENTAL CATCH

Several commenters stated that the incidental catch percentage for stationary gear (gillnets and traps) was unfair. The Service feels that the percentage rate adequately provides for those few tuna that inadvertently enter stationary gear which is intended for the capture of other species. The owners of stationary gear may apply for a certificate, and may take tuna, in accordance with applicable regulations.

DISCUSSION OF MISCELLANEOUS COMMENTS

One commentor suggested that a limited entry scheme for purse seine vessels be implemented based on historical participation in the fishery. Strictly speaking, this comment goes beyond the scope of the proposed rules. In addition, the Service feels that such a procedure would be most difficult to implement for 1977. However, such a procedure might be considered for 1978.

Several commenters requested that the proposed purse seine vessel allocation be eliminated. The Service concurs since such an allocation is not workable from a practical point of view.

Issued in Washington, D.C., June 8, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

Accordingly, Subpart B of 40 CFR Part 285 is revised as follows.

Subpart B—Atlantic Bluefin Tuna (Thunnus thynnus thynnus)

Sec.

285.10 Effective period of regulations.
285.11 Authorized fishing.
285.12 Open and closed seasons
285.13 Quotas.
285.14 Incidental catch.
285.15 Gear restrictions.
285.16 Purse seine vessel inspection.
285.17 General restrictions.
285.18 Reporting requirements.
285.19 Presumptions.
285.20 Certification.
285.21 Tag and release permits.

AUTHORITY: Atlantic Tuna Conventions Act of 1975, Pub. L. 94-70, 16 U.S.C. 971-971h.

Subpart B—Atlantic Bluefin Tuna (Thunnus thynnus thynnus)

§ 285.10 Effective period of regulations.

These regulations shall remain in force until superseded, amended, or otherwise suspended.

§ 285.11 Authorized fishing.

Fishing for Atlantic bluefin tuna that weigh between 14 pounds and 115 pounds round weight or in excess of 300 pounds round weight, by persons or fishing vessels subject to the jurisdiction of the United States, is authorized in the regulatory area only during open seasons. Fishing for Atlantic bluefin tuna that weigh less than 14 pounds round weight or in excess of 115 pounds round weight, but less than 300 pounds round weight, by persons or fishing vessels subject to the jurisdiction of the United States is not authorized at any time in the regulatory area except, however, as provided for in § 285.13 of this Subpart B. However, Altantic bluefin tuna that weigh less than 14 pounds or in excess of 115 pounds round weight, but less than 300 pounds round weight, may be taken incidentally in the course of fishing in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States but only in the manner and in the numbers or weights, as the case may be, as set forth in § 285.14.

§ 285.12 Open and closed seasons.

(a) The seasons for the taking of Atlantic bluefin tuna shall be closed when the Director or his representative announces such closing through direct or indirect communication with participants in the fishery or by announcement in the FEDERAL REGISTER.

(b) The season for taking Atlantic bluefin tuna weighing in excess of 300 pounds round weight, by purse seining, shall begin on September 1.

(c) The season for taking Atlantic bluefin tuna, other than as specified in paragraphs (b) and (c) of this section, shall commence on January 1.

§ 285.13 Quotas.

(a) Purse seining:

(1) The total annual seine quota for Atlantic bluefin tuna that weigh between 14 pounds round weight and 115 pounds round weight is 1,000 short tons. Of this total annual quota of 1,000 short tons, 800 short tons may be taken during the open season and 200 short tons are reserved to be taken at any time during the year incidental to the conduct of a scientific bluefin tuna tagging project. Such tagging efforts shall be conducted under the direct supervision of the Center Director, Southeast Fisheries Center (SEFC), National Marine Fisheries Service (NMFS), Miami, Florida, or his representative and shall involve no more than four (4) purse seine vessels and associated crews to be selected by the Center Director or his representative.

(2) A special scientific quota not to exceed 25 short tons of Atlantic bluefin tuna is established for the purposes of obtaining age, sex, and other scientific research data, and for the tagging of Atlantic bluefin tuna weighing between 115 and 300 pounds round weight. Such research activity shall be conducted under the direct supervision of the Center Director, Southeast Fisheries Center, NMFS, or his representative.

(3) The total annual seine quota for Atlantic bluefin tuna that weigh in excess of 300 pounds round weight is 180 short tons.

(b) Fishing by other than purse seining:

(1) The total annual quota of Atlantic bluefin tuna which weigh in excess of 300 pounds round weight is 2,000 tuna. Each vessel fishing for Atlantic bluefin tuna with gear other than a purse seine may land no more than one (1) Atlantic bluefin tuna weighing over 300 pounds round weight each day through August 13. After August 13 no more than seven such tuna may be landed in any week, Sunday through Saturday, until the quota has been reached.

(i) Of this total annual quota of 2,000 Atlantic bluefin tuna, no more than 1,850 tuna may be taken north and east of a line drawn from a point on the southern coast of Massachusetts extending south through Gay Head Light, Massachusetts, into the Atlantic Ocean and no more than 150 tuna may be taken from waters west of said line, including the waters of Narragansett Bay.

(ii) Of this 1,850 Atlantic bluefin tuna allocation, 100 such tuna may be reserved for a scientific research program designed to identify the distribution and abundance of Atlantic bluefin tuna in the Northwest Atlantic. Such research shall be conducted in close cooperation with the Center Director, SEFC, but under the direct supervision of the Northeast Regional Director, National Marine Fisheries Service, Gloucester, Massachusetts, or his representative and shall take place at his discretion.

(2) In lieu of an annual quota, a daily bag limit of four (4) Atlantic bluefin tuna per person is authorized for persons who fish for Atlantic bluefin tuna which weigh between 14 pounds round weight and 115 pounds round weight.

(c) When the quota for a particular class of Atlantic bluefin tuna has been reached, the Director shall, in accordance with § 285.12 close the season for Atlantic bluefin tuna of that class, provided, however, that anglers may continue a tag and release program pursuant to § 285.21.

(d) The Director upon review of the Atlantic bluefin tuna catch may reallocate catch quotas by publication of a notice in the FEDERAL REGISTER.

§ 285.14 Incidental catch.

(a) Purse seine vessels fishing for Atlantic bluefin tuna weighing more than 300 pounds round weight may take incidentally, during any trip, Atlantic bluefin tuna weighing less than 300 pounds round weight, provided that the amount of such tuna taken shall not exceed 3 percent, by weight, of the total amount of Atlantic bluefin tuna onboard the vessel. Purse seine vessels fishing for Atlantic bluefin tuna weighing more than 14 pounds round weight but less than 115 pounds round weight may take incidentally, during any trip, Atlantic bluefin tuna outside said weight class, provided that the amount of such tuna taken shall not exceed 3 percent, by weight, of the total amount of Atlantic bluefin tuna onboard the vessel.

(b) Persons angling for Atlantic bluefin tuna, which weigh between 14 pounds round weight and 115 pounds round weight, may include in their daily bag limit one Atlantic bluefin tuna less than 14 pounds round weight and one Atlantic bluefin tuna greater than 115 pounds round weight, but less than 300 pounds round weight, provided, however, that in no case may the daily bag limit of 4 Atlantic bluefin tuna, as specified in § 285.13(b)(2), be exceeded.

(c) Persons or fiishing vessels subject to the jurisdiction of the United States fishing principally for species of fish other than Atlantic bluefin tuna, except operators of traps, may take, during any trip, Atlantic bluefin tuna, provided that the amount of Atlantic bluefin tuna taken does not exceed 1 percent, by weight, of all other fish onboard the vessel and provided further, that such vessels have been issued an Atlantic bluefin tuna certificate pursuant to this subpart. Operators of traps may retain Atlantic bluefin tuna taken incidentally in these operations, provided that said tuna do not exceed 2 percent, by weight, of the total amount of all other fish species taken within the preceding 30-day period.

(d) All Atlantic bluefin tuna taken incidentally shall be included in the appropriate quotas set forth in § 285.13.

§ 285.15 Gear Restrictions.

It shall be unlawful for any person or vessel subject to the jurisdiction of the United States to engage in a directed fishery for Atlantic bluefin tuna, under § 285.13(a), with nets, other than a trap net, if such net has a mesh size larger than 4.5 inches in the main body and 8 inches in the selvedge (stretched when wet), or has less than 24 count thread anywhere in the net. Such net not to exceed 2,700 feet overall length.

§ 285.16 Purse seine vessel inspection.

It shall be unlawful for any owner, of any purse seine vessel that has been issued an Atlantic bluefin tuna vessel certificate, under section 285.20, to begin fishing with such vessel and fishing gear for Atlantic bluefin tuna without first having the vessel and fishing gear inspected by an agent of the National Marine Fisheries Service. Arrangements for an inspection shall be made by calling 617–281–3600, ext. 252.

§ 285.17 General restrictions.

(a) It shall be unlawful for any person, master or operator of any fishing vessel subject to the jurisdiction of the United States to land any Atlantic bluefin tuna in other than the whole round form, or eviscerated and the head removed.

(b) It shall be unlawful for any person to submit an application for a vessel certificate, under § 285.20, unless such vessel is capable of travelling to and from the fishing ground under its own power, and is capable of landing Atlantic bluefin tuna with no assistance from other vessels, except in the case of force majeure.

(c) It shall be unlawful for any person, master, or operator, of any vessel subject to the jurisdiction of the U.S. to fail to release immediately, with a minimum of injury, any Atlantic bluefin tuna which will not be retained or to have in possession any Atlantic bluefin tuna which will not be retained. It shall be presumed that any Atlantic bluefin tuna in possession which is not tagged will not be retained.

(d) It shall be unlawful for any person to knowingly purchase, or have in possession, any Atlantic bluefin tuna taken in violation of this Subpart.

§ 285.18 Reporting requirements.

(a) Reports and records required by this section should be sent to:

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

All tags, forms, and logbooks referred to in this section 285.18 may be obtained by writing to the same address.

(b) It shall be unlawful for any person, master or operator of any fishing vessel subject to the jurisdiction of the United States that takes an Atlantic bluefin tuna in excess of 300 pounds round weight to have in possession such fish without having affixed, at the time of taking, through the narrowest part of the fish just forward of the tail, an individually numbered tag furnished by the National Marine Fisheries Service.

(c) It shall be unlawful for any person to remove the tag affixed to the tuna in paragraph (b) until the fish is either cut into portions for sale or is exported from the United States. Such tag may be removed from tuna packed whole or headed and eviscerated for export, but, in such cases, the tag must be attached to the container holding the fish until it is shipped from the United States.

(d) It shall be unlawful for any dealer to fail to maintain and forward on a weekly basis, on forms available from the National Marine Fisheries Service, a complete record of their commercial activity involving all Atlantic bluefin tuna handled during the reporting period. Such record shall include numbers of fish, disposition (names, addresses and, where applicable, country of destination), source (names, addresses and, where applicable, country of origin), tag numbers (where applicable), round weight (by individual fish for those over 300 pounds), and any other information requested by the Regional Director.

(e) It shall be unlawful for an owner or master of any vessel certified under § 285.20 and fishing for Atlantic bluefin tuna that weigh in excess of 300 pounds round weight, to fail to maintain an accurate record of operations in a logbook provided by the National Marine Fisheries Service. One of the logsheets is to be returned to the Regional Director at the end of each month during the season. Such record shall show, for each week that the vessel was engaged in fishing for Atlantic bluefin tuna the date, number and weight of Atlantic bluefin tuna landed, type of gear used, area fished, tag numbers used, and the amount of time fished. In the case of purse seine vessels, the record shall show the information for each set made rather than for each week.

(f) It shall be unlawful for an owner or master of any vessel certified under § 285.20, and taking Atlantic bluefin tuna under the provisions of § 285.13(b)(1), to fail to report each taking immediately upon returning to port, by completing and returning one of the cards provided for this purpose in the logbook. Each report shall show the Atlantic bluefish tuna vessel certificate number, the tag number affixed to the fish under § 285.18(b), the date landed, the port where landed, the round weight in pounds, gear used and area where caught.

(g) It shall be unlawful for the owner or designated representative of any purse seine vessel certified under section 285.20 of this subpart to fail to notify the National Marine Fisheries Service of its catch of tuna every day while engaged in fishing for Atlantic bluefin tuna. Such reports shall be made by telephoning 617–882–7711. The call will be recorded automatically. The report shall include the name of the person calling, the name of the vessel, the Atlantic bluefin tuna vessel certificate number, the estimated catch of tuna by weight on board the vessel at the time the call is made.

(h) It shall be unlawful for any person, master or owner of any purse seine vessel certified under § 285.20, to off-load any Atlantic bluefin tuna taken pursuant to this subpart without first arranging to have the vessel inspected by an agent of the NMFS. Arrangements for such inspection shall be made at least 24 hours prior to off-loading, by calling 617–281–3600, extension 252.

§ 285.19 Presumptions.

For purposes of this Part, there shall be a rebuttable presumption that Atlantic bluefin tuna which are of the following lengths, when measured in a straight line from the tip of the nose to the fork of the tail, weigh the amount noted in association with the length: 27 inches (68 cm)—14 pounds (6.4 kg); 56 inches (142 cm)—115 pounds (53.3 kg); 75 inches (191 cm)—300 pounds (136.4 kg), or the proportional length of the body with the head removed. For any Atlantic bluefin tuna which is less than or in excess of the lengths set forth herein, there shall be a rebuttable presumption that such Atlantic bluefin tuna correspondingly weigh less than or in excess of, as the case may be, the appropriate associated weights.

§ 285.20 Certification.

(a) The owner of any vessel which fishes for Atlantic bluefin tuna weighing in excess of 300 pounds round weight within the regulatory area must obtain a certificate.

(b) The owner of any vessel which fishes with a purse seine for Atlantic bluefin tuna weighing between 14 and 115 pounds round weight within the regulatory area must obtain a certificate.

(c) All applications for a certificate to fish for Atlantic bluefin tuna by purse seine must be received by the Regional Director by June 15.

(d) To be eligible for a certificate, a fishing vessel must be properly documented under the laws of the United States, or registered under State law.

(e) Certificates may be obtained on submission of an application form, obtainable from the National Marine Fisheries Service, specifying the name(s) and address(es) of the vessel owner(s), the name of the vessel, official number(s), type of fishing gear to be used, capacity (if commercial), and home port of the vessel. The form shall be submitted to the Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts, 01930, who shall issue the required certificate without fee. The certificate will remain in effect until the vessel is destroyed, sold, or transferred to another owner, returned, or revoked pursuant to Subsection (f) of this section, provided however, that owners of purse seine vessels, certified under this section, must comply with the provisions of § 285.16 each year.

(f) It shall be unlawful to fail to carry such certificate at all times on board the vessel for which it was issued. The certificate shall be subject to inspection at reasonable times by authorized officials.

(g) Certificates issued under this Section may be revoked by the Regional Director for violations of the provisions of this Subpart B. Revocation will be in accordance with the hearing procedures referenced in § 285.6 of this part.

(h) It shall be unlawful for any vessel, required to have a certificate pursuant to paragraphs (a) and (b) of this section to fish for Atlantic bluefin tuna without a valid certificate.

§ 285.21 Tag and release permits.

(a) It shall be unlawful for any angler to catch and release Atlantic bluefin tuna weighing over 300 round weight, without first tagging such tuna with tags supplied by the National Marine Fisheries Service.

Such catching, tagging, and releasing must be conducted from a vessel which has applied for, and been issued, a tag and release permit pursuant to paragraph (b) of this section.

(b) Owners of vessels certified under § 285.20 who also desire to obtain a tag and release permit for their vessel should submit their application in writing to the Center Director, Southeast Fisheries Center, NMFS, 75 Virginia Beach Drive, Miami Florida, 33149, who will issue the permit along with appropriate tags and detailed instructions for the tagging procedure. Such application must include the name of the vessel, official Coast Guard and/or State number(s), names of the owner and master, fishing certificate number, and the general area(s) in which the tag and release activity will be carried out.

(c) It shall be unlawful for any person to tag and release Atlantic bluefin tuna without having obtained a tag and release permit pursuant to this section, and a certificate pursuant to § 285.20.

[FR Doc.77-16686 Filed 6-13-77;8:45 am]

proposed rules

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

CIVIL AERONAUTICS BOARD

[14 CFR Part 378]

[Docket 30667; EDR-328; SPDR-58; PSDR-48]

PRICE ADVERTISING OF AIR TRANSPORTATION

Advance Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice invites organizations representing consumer interests, the industry (including air carriers, foreign air carriers and travel agents), the Consumer Affairs Office, the Internal Revenue Service, the Federal Trade Commission, as well as other interested government agencies, and the general public to participate in a comprehensive rulemaking proceeding with respect to price advertising of air transportation, especially charters. The rulemaking is designed to determine the scope of problems in this area, to decide whether amendment of existing rules or promulgation of new rules is desirable, and, if so, the nature and content of those amendments or rules. The proceeding is instituted in response to various petitions and inquiries received by the Board.

DATES: Comments by: July 25, 1977; Reply comments by: August 15, 1977; Requests to be placed on the Service List by: July 5, 1977.

ADDRESSES: Comments should be sent to Docket 30667, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Docket comments may be examined at the Docket Section, Civil Aeronautics Board, Room 711, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenburg, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Recent petitions for rulemaking and requests for opinions on various situations involving the prescribed manner of advertising the price of different types of charters and other forms of air transportation sold to the public, either with or without tour "packages," have persuaded the Board of the need to initiate a broad review of our regulations and policies in this area. The issues involved are of considerable importance to the traveling public, affecting as they do a prospective passenger's knowledge of what is included in an advertised price, and what a proposed trip would cost under alternative types or plans of transportation.

The first specific regulation prescribing the manner of advertising the price of air transportation was in 1969, with respect to the marketing by operators of Inclusive Tour Charters (ITC's). This was then the only type of charter permitted to be sold to members of the general public, and it was strictly limited to charter flights that are sold as part of a three-stop tour "package." Our regulations therefore limited the advertisement of those ITC prices to the "total tour price,"[1] and accordingly, we denied requests to break the tour price down into land and air portions. We also denied requests to include a separate statement of "taxes," noting that the figure quoted as "taxes" in connection with the sale of ITC's is not a tax levied on the sale of the tour, but rather an estimate of the sum of taxes paid at various locations and in various forms for components of the tour arrangement.[2] However, we did permit separate listing of the cost for purely optional services and facilities the ITC participant might elect.

This limitation to advertising only the total tour price, without permitting separate disclosure of component costs, was carried over to Special Event Charters[3] and to One-stop-inclusive Tour Charters (OTCs).[4] On the other hand, since there is not necessarily any ground accommodation included in an ABC charter, the newest of the charter types, the question of component advertising did not arise at the time this rule was adopted, and the "total tour price" language is not included in the ABC rule.[5] For this reason, the Board's Bureau of Operating Rights has accepted ABC filings with separate components in cases where ground accommodations are offered. It has also taken the position, in an explanatory bulletin, that, although it is preferable to include taxes in the advertised ABC price, it is permissible to show taxes separately from the charter seat price provided this is clearly done.[6]

Nor has the problem of avoiding deceptive advertising practices been confined to the marketing of charters by tour operators. For example, advertisements similar to those which provided the initial impetus for the original ITC advertising rule have appeared with respect to Group Inclusive Tours (GITs), a form of tour "package" sold in connection with promotional scheduled service fares. And our Policy Statement on the advertising of GITs[7] (§ 399.84) has not been entirely satisfactory.

More recently, it has been pointed out that some statements of chartering organizations to their membership in advertising "affinity" charters have similarly obscured additional charges, and there is now pending a rulemaking proceeding addressed to that problem. With respect to "affinity group" charters, EDR-311, October 18, 1976, gave notice that the Board had under consideration amendment of pro rata charter rules to require (1) that taxes and services be included in the stated "total cost" and (2) that the nature of any such taxes and services be precisely identified. While no comments opposing this proposed rule have been filed, five tour operators have asserted a need for additional regulations.[8]

While the Board has thus taken or proposed to take a number of actions designed to promote fully informative price advertising, we are concerned that regulations directed to particular prob-

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[1] § 378.12, 14 CFR § 378.12.

[2] SPR-32, October 14, 1969, p. 10.

[3] § 378a.105(c), 14 CFR § 378a.105(c) ("total trip price").

[4] § 378a.27, 14 CFR § 378a.27.

[5] The rule does contain the statutory prohibition against an operator's engaging in unfair or deceptive practices or unfair methods of competitions in the sale of air transportation. § 371.27, 14 CFR § 371.27.

[6] Supplemental List of ABC Questions and Answers, December 10, 1976, p. 3.

The one component "total tour price" rule is also not applicable to Travel Group Charters (Part 372a) which are pro rata and have maximum and minimum prices depending on the number of participants. TGC filings with the Board show the 8 percent U.S. domestic tax as part of the price but break out the $3 U.S. airport tax on international flights.

While the Study Group Charter rule (Part 373) does not contain the "total tour price" language, statements filed with the Board for these charters have followed the one component rule.

[7] Page 4 of PS-62, January 29, 1975.

The question of taxes was raised by the American Society of Travel Agents which assumed that the GIT rule would in this respect be the same as the ITC rule and further assumed that the ITC rule did not require statement of taxes paid directly by the tour participant to a governmental authority.

[8] Brendan Tours, Inc., Charter Travel Corporation, Duncan Travel Service, Globus-Gateway Tours, Ltd. and Gogo International, Inc.

lems in particular areas may have resulted in a patchwork which is insufficiently comprehensive and is unclear in its application to some situations. There also appear to be questions as to how our regulations relate to the Internal Revenue Code.

American Airlines (American), by letter of March 7, 1977, has called the attention of the Board's General Counsel to section 7275(b) of the Internal Revenue Code.[9] This section deals with price advertising of air transportation which is taxable, or which would be taxable if the definition of "taxable transportation" in § 4262 of the Code did not contain certain exceptions. We had not previously been aware of this regulation and preliminary research has revealed no examples of its application. On its face, section 7275(b) requires that the advertised cost of covered air transportation state such cost as the total of the air transportation charge and U.S. imposed taxes.[10] American suggests, therefore, that the statement on inclusion of taxes in ABC charter prices which appears in the bulletin of the Board's Bureau of Operating Rights may require revision.

Questions as to inclusion of taxes in advertised prices have also arisen with respect to GITs. Here, although the subject was dealt with in the preamble of PS–62, the Board's staff has been informed that difficulties have arisen, particularly concerning taxes which are collected at airports abroad and paid directly by tour participants.

Problems of price advertising are also raised by a recent petition for rulemaking filed by Gogo.[11] This petition requests that we either revise the "total tour price" requirements of sections 378.12 and 378a.27, or so interpret these sections as to permit tour operators separately to show charges in addition to the lowest price. The charges in question would be based on seasonal, holiday, or day of the week additions, or on higher categories of accommodation. Gogo desires to show these variations as "surcharges" in a single table advertising the lowest prices, rather than showing the total price for each season (holiday, weekday) or category of accommodation.[12]

The Board's Bureau of Operating Rights has rejected the type of filing favored by Gogo as inconsistent with the "one component" requirements in effect for ITCs since 1969, and for OTCs since their inception. Gogo asserts, however, that our one component ("total tour price)" requirement has in fact resulted in public confusion. It urges that the type of advertising it seeks to employ would reduce public confusion at the same time that it would reduce advertising costs for ITCs and OTCs and put these forms of charter on a more equitable competitive footing vis-a-vis ABCs and GITs.

Royal Caribbean Tours, Inc., another tour operator, supports the Gogo petition, arguing that the proposed form of advertising is in fact in conformity with the purposes behind the "total tour price" single component restriction because it does not break the price down into land and air components, and because it is not deceptive.[13]

The Office of the Consumer Advocate (OCA), while generally supporting the Gogo petition, asks that we consider measures to protect the public against "low-ball" advertising, i.e., featuring the lowest possible price and deemphasizing additional charges. OCA would have us require in any ITC or OTC tour advertisement (1) a specific statement that the minimum accommodations are available for each departure and (2) specification, for each departure, of the number of rooms available at the lowest price.

Charter Travel Corporation (CTC), on the other hand, an operator of ITCs, OTCs, and ABCs, contends that OCA's proposal would result in additional advertising complications and produce no benefits for the public or for advertisers. It urges that hotels may not always be able to give a tour operator the "normal" block of rooms, that commitments may be changed after brochures are provided, and that fear of being saddled with responsibility to provide low cost accommodations in these circumstances could discourage efforts to offer low price accommodations.[14] In fact, CTC states that the minimum advertised price might be available only during a low season or at least might not be available for all departures. CTC's understanding of the kind of advertising Gogo seeks to engage in thus appears to differ markedy from that of OCA. CTC would have us expedite approval of the Gogo petition and only later—if we find it necessary—consider the problem of "low ball" pricing in an industrywide rulemaking.

The number and variety of questions arising with respect to price advertising illustrates the complexities in effectuating a policy of ensuring clear and complete disclosure. In all of the circumstances, we find it appropriate to consider the Gogo petition, American's letter on inclusion of taxes in ABC charters,[15] and the rulemaking with respect to affinity charters as parts of a more comprehensive rulemaking concerned with price advertising of all passenger air transportation.[16]

With respect to the question raised by American concerning the relationship between the Bureau statement on ABC prices and section 7275(b) of the Internal Revenue Code, we should like the benefit of Internal Revenue's advice. In any event, and entirely apart from the Code, we find that the whole question of inclusion of taxes in advertised prices should be considered in the general rulemaking.

It is clear that in the broad rulemaking which we are considering, we need the experience and advice of consumers as members of the general public and as represented by consumer organizations, of all segments of the industry (including air carriers, foreign air carriers, and travel agents), and of all governmental agencies with an interest in price advertising.

We are interested in comments on the operation of existing Board rules, particularly on the extent to which they ensure complete and accurate information to consumers. Is there confusion as to the real price of air transportation? Is there difficulty in comparing competitive methods of travel? What is the practical effect of the one-component limitation with respect to ITCs and OTCs, the absence of such a limitation in the ABC rule, the two component limitation on GITs? Have these been instances where prospective passengers have been misled by advertised prices? What evidence is there to support the contention that the "total tour price" one component rule (§§ 378.12 and 378a.27) has been a source of public confusion?

Should the one component limit be relaxed as to ITCs and OTCs? Or should it be extended to ABCs and/or other charters and tours? If it should be relaxed, should Gogo's proposal be approved? Should OCA's proposed restrictions, or other restrictions, be adopted?

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[9] Section 7275(b) of Title 26, U.S.C. provides:

(b) Advertising.—In the case of transportation by air all of which is taxable transportation (as defined in section 4262) or would be taxable transportation if section 4262 did not include subsection (b) thereof, any advertising made by or on behalf of any person furnishing such transportation (or offering to arrange such transportation) which states the cost of such transportation shall—

(1) state such cost as the total of (A) the amount to be paid for such transportation, and (B) the taxes imposed by sections 4261 (a), (b), and (c), and

(2) if any such advertising states separately the amount to be paid for such transportation or the amount of such taxes, shall state such total at least as prominently as the more prominently stated of the amount to be paid for such transportation or the amount of such taxes and shall describe such taxes substantially as: "user taxes to pay for airport construction and airway safety and operations."

[10] The taxes in question, enumerated in § 4261 (a), (b), and (c) of the Code, are the 8 percent domestic transportation tax, the 8 percent tax on seating or sleeping accommodations in connection with domestic transportation, and the $3 tax on international transportation commencing in the United States.

[11] Docket 30667.

[12] While Gogo does not discuss the matter in its petition, it would appear from the submitted advertising that it also desires to show taxes separately instead of including them in the "total tour price."

[13] Royal Caribbean's November 16, 1976, petition for review of staff action rejecting similar solicitation material was denied by Letter of February 23, 1977.

[14] In addition, CTC suggests that an operator would in fact be providing the same package at different prices in violation of § 378.11 and 378a.26.

[15] We are treating American's request for "correction" as a petition for rulemaking.

[16] The rulemaking proceeding in Docket 29444 is therefore being consolidated into this proceeding.

Is a requirement of "clear disclosure" of the total price (exclusive of options) sufficient to protect the public?

Should the rule for inclusion of taxes in the tour price be the same for all types of charter, and for tours? Should taxes be included in prices for all air transportation? Should there be any distinctions as to particular kinds of tax, based, for example, on where, how, or by what authority the tax is collected and/or whether the passenger or a tour operator or agent pays the tax? Should all taxes be itemized and identified?

REQUEST FOR COMMENTS

Interested persons may participate in the proposed rulemaking through submission of 20 copies of written data, views, or arguments addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All comments received on or before July 25, 1977, and reply comments received on or before August 15, 1977 will be considered by the Board before taking further action. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., upon receipt.

Those persons planning to file comments or responsive comments who wish to be served with such comments filed by others, and are willing to undertake to serve their comments on others, shall file with the Docket Section at the above address by July 5, 1977 a request to be placed on the Service List in Docket 30667. The Service List will be prepared by the Docket Section and sent to the persons named on it. Those persons are to serve each other with comments or responsive comments at the time of filing.

A list of all persons filing comments will be prepared by the Docket Section and sent to the persons named on it. In addition to those on the Service List who fled comments, persons filing responsive comments should also serve any person whose comment is dealt with in their responsive comments.

Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding may do so through submission of comments in letter form to the Docket Section at the above address, without the necessity of filing additional copies.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-16920 Filed 6-13-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 200, 230]

[Release No. 33-5831; File S7-702]

SMALL ISSUES EXEMPTION

Procedures Regarding Abandoned Notifications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to adopt a procedure whereby it may determine whether a filing pursuant to the small issues exemption from registration under the Securities Act of 1933 has been abandoned so that it may be removed from consideration as a pending matter. This procedure would enable the Commission to remove from consideration as a pending filing those filings which are not up to date and should not be relied upon for the accuracy of the information therein.

DATES: Comments must be received on or before July 31, 1977.

ADDRESSES: All communications on this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-702 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Ruth D. Appleton, Chief, Office of Tender Offers, Acquisitions and Small Issues, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. (202) 755-1290.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today proposed for comment Rule 264 (17 CFR 230.264) and an amendment to its rule governing delegation of authority to Regional Administrators (17 CFR 200.30-6) establishing a procedure whereby the Commission may determine that a notification of Form 1-A (17 CFR 239.90) filed pursuant to the Regulation A exemption (17 CFR 230.251 to 230.264) from the registration requirements of the Securities Act of 1933, as amended ("the Securities Act") (15 U.S.C. 77a et seq.), has been abandoned. The Commission may then remove such filings from consideration as a pending matter.

BACKGROUND

At any given time, there are on file with the Commission a number of notifications on Form 1-A which the issuers appear to have abandoned. This situation may have developed either because the issuer has determined not to proceed with an offering due to changed market or other conditions or because the issuer has ceased operations due to its dissolution or bankruptcy. Whatever the reason, the filing is not up to date and should not be relied upon for the accuracy of the information therein. Therefore, the filing should be withdrawn by the issuer or otherwise removed from consideration as a pending filing.

To accomplish this purpose, the proposed rule provides that when a Regulation A filing has become out of date by the passage of nine months from the filing date of the notification or from the filing date of the latest subsequent amendment thereto, and the issuer has not furnished the Commission a satisfactory explanation why it has not amended or withdrawn the filing, the Commission may, in its discretion, follow the procedure set forth in the proposed rule. The proposed rule also provides that an abandoned filing shall be marked as such and shall remain in the files of the Commission.

In order to simplify most effectively the procedure for ordering abandonment of Regulation A filings, the Commission also proposes to delegate the authority to order such filings abandoned to the Regional Administrators.

TEXT OF AMENDMENTS

I. The Commission's Rules of Organization (17 CFR 200.1 to 200.30-12) are proposed to be amended by adding a new § 200.30-6(a)(4) to read as follows:

§ 200.30-6 Delegation of authority to Regional Administrators.

* * * * *

(a) * * *

(4) To issue orders declaring notifications on Form 1-A (§ 239.90 of this chapter) abandoned pursuant to Rule 264 (§ 230.264 of this chapter).

* * * * *

II. Regulation A (17 CFR 230.251 to 230.263) is proposed to be amended by adding a new § 230.264, reading as follows:

§ 230.264 Procedure with respect to abandoned notifications on Form 1-A (§ 239.90).

When a notification on Form 1-A (§ 239.90) under §§ 230.251 to 230.264, or the latest substantive amendment thereto, if any, has been on file with the Commission for a period of nine months from its filing date and the offering has not commenced, the Commission may, in its discretion, proceed in the following manner to determine whether such filing has been abandoned by the issuer.

(a) Notice will be sent to the issuer, and to any counsel for the issuer named in the notification, by registered or certified mail, return receipt requested, addressed to the most recent addresses for issuer and issuer's counsel as reflected in the notification. Such notice will inform the issuer and issuer's counsel that the notification or amendments thereto is out of date and must be either amended to comply with applicable requirements of §§ 230.251 to 230.264 or be withdrawn within thirty days after the date of such notice.

(b) If the issuer or issuer's counsel fails to respond to such notice by filing a substantive amendment or withdrawing the notification or does not furnish a satisfactory explanation as to why the issuer has not done so within such thirty days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the notification abandoned.

(c) When such an order is entered by the Commission, the papers comprising the notification and any amendment thereto will not be removed from the files of the Commission but will be plainly marked in the following manner: "Declared abandoned by order dated ----------." (Secs. 3(b), 19(a), 48 Stat. 75, 85; Sec. 209, 48 Stat. 908; c. 122, 59 Stat. 167; Pub. L. 91-565, 84 Stat. 1480; 15 U.S.C. 77c(b), 77s(a))

The Commission proposes for comment Rule 264 pursuant to sections 3(b) and 19(a) of the Securities Act. The delegation of authority amendment is proposed to be made pursuant to Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 6, 1977.

[FR Doc.77-16867 Filed 6-13-77;8:45 am]

[17 CFR Part 230]

[Release Nos. 33-5833, IC-9811; File No. S7-705]

ADVERTISING BY INVESTMENT COMPANIES

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Commission proposes to adopt a rule under which any investment company registered under the Investment Company Act of 1940 which has filed a registration statement under the Securities Act of 1933 ("1933 Act") would be permitted to advertise with respect to the securities covered by such registration statement subject to certain restrictions and conditions. It further proposes to amend an existing rule to remove the restriction limiting the use of expanded tombstone advertisements to investment companies whose registration statements under the 1933 Act have become effective. These proposals would permit inclusion of more information in such advertisements than permitted under existing laws and rules.

DATES: Comments must be received on or before July 25, 1977.

ADDRESS: Comments should be sent in triplicate, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and should refer to File No. S7-705.

FOR FURTHER INFORMATION CONTACT:

Stanley B. Judd, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549, (202) 755-1335.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Securities and Exchange Commission has under consideration the adoption of a rule under the Securities Act of 1933 (the "1933 Act") (15 U.S.C. 77a et seq.) which would permit any investment company registered under the Investment Company Act of 1940 (the "1940 Act") (15 U.S.C. 80a et seq.) which is selling or proposing to sell its securities under a registration statement filed under the 1933 Act to advertise with respect to the securities referred to in such registration statement so long as any such advertisement (1) appears in a newspaper or magazine of general circulation, (2) contains only information the substance of which is included in the section 10(a) prospectus, (3) states conspicuously from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing, (4) is limited to no more than 600 words, excluding required legends, and charts and graphs and (5) if used prior to effectiveness of the registration statement, contains the statement required by rule 433(b) (17 CFR 230.433(b)).

The Commission also has under consideration the adoption of an amendment to rule 134 (17 CFR 230.134) under 1933 Act that would remove the prohibition presently contained in the rule with respect to the use by investment companies, during the time between the filing of a registration statement and the time the statement becomes effective, of an adverisement which contains information that the rule presently permits only after effectiveness.

The new rule would be adopted pursuant to the authority granted the Commission in sections 10(b), 10(c), 10(d), 10(f) (15 U.S.C. 77j (b), (c), (d), and (f)) and 19(a) (15 U.S.C. 77s(a)) of the 1933 Act. The Amendment to rule 134 would be adopted pursuant to sections 2(10) (15 U.S.C. 77b(10)) and 19(a) of the 1933 Act.

I. BACKGROUND

Investment companies, like other issuers, are restricted in their opportunities to advertise sales of their securities by the following: (1) Section 2(3) (15 U.S.C. 77b(3)) of the 1933 Act which defines an "offer to sell" to include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or an interest in a security, for value; (2) subsection (c) of section 5 (15 U.S.C. 77e (c)) of the 1933 Act which makes it unlawful for any person to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, any security unless a registration statement has been filed as to such security; (3) section 2(10) of the 1933 Act which includes an advertisement in the definition of a prospectus; and (4) section 5(b)(1) (15 U.S.C. 77e(b)(1)) of the 1933 Act which prohibits the use of jurisdictional means to carry or transmit any prospectus relating to any security with respect to which a registration statement under the 1933 Act has been filed unless such prospectus meets the requirements of section 10 (15 U.S.C. 77j) of the 1933 Act. Under section 10(a) (15 U.S.C. 77j(a)) of the 1933 Act, prospectuses are required to contain, with certain exceptions, information which section 7 (15 U.S.C. 77g) of the 1933 Act, and Schedules A and B thereunder, require to be included in a registration statement.

There are three exceptions to the general requirement that public communications offering securities for sale be in the form of section 10(a) prospectuses.

(1) Section 2(10)(a) (15 U.S.C. 77b (10)(a)) excepts from the definition of a prospectus a communication preceded or accompanied by a written prospectus meeting the requirements of section 10(a). It is under this exception that investors have been sent sales literature preceded by or together with a section 10(a) prospectus.

(2) Section 2(10)(b) (15 U.S.C. 77b (10)(b)) excepts from the definition of a prospectus,

> A notice, circular, advertisement, letter or communication in respect of a security * * * (which) states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

This second exception, and rule 134 thereunder, permit the so-called "tombstone" advertisement.

(3) The third exception from the general scheme of regulation is provided by section 10(b) which authorizes the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors to permit the use of a prospectus, for the purpose of subsection (b)(1) of section 5, which omits in part or summarizes information in the prospectus specified in subsection 10(a). It is under this provision that the Commission has authorized the "summary prospectus."

Because the only "product" of the typical investment company is its shares and because it is in continuous registration, any advertisement for such a company is a prospectus that is illegal unless it complies with statutory requirements. As a result, investors cannot learn about an investment company, as they can learn about other companies, from advertisements of its products or policies or from widely disseminated annual reports to shareholders or similar publications. Moreover, since institutions such as savings and loan institutions and insurance companies which compete with investment companies for investor interest are not subject to the same limitations on their advertising as are investment companies, these limitations may restrict the availability to investors of information about all relevant investment possibilities. Expansion, to some extent, of the information available to investors may assist them in considering alternative investment opportunities. The Commission is, therefore, presently proposing to issue a rule that would permit more information to be included in investment company advertising than is presently permitted. However, the Commission seeks comment on whether any benefit of advertising to investment companies, investors, and the public is significant enough to outweigh (1) the risk that investors may be misled by advertisements, which risk is attendant upon any rule no matter how circumscribed that would permit greater latitude in

advertising and (2) the substantial surveillance and enforcement costs to the Commission that may be entailed. In this connection, the Commission is interested in the role that may be played by industry groups or self-regulatory organizations.

II. Proposed New Rule

It does not appear that the summary prospectus, as currently permitted by rule 424a (17 CFR 230.434a), is used to any extent as an investment company advertisement in public media such as newspapers and magazines of general circulation.

While the requirements of rule 434a may be appropriate with respect to a document, such as a summary prospectus as now permitted, which an investor might reasonably confuse with a section 10(a) prospectus, they may be neither necessary nor appropriate with respect to a "brief advertisement" in a newspaper or magazine of general circulation.

Pursuant to section 10(d) of the 1933 Act, the Commission is authorized, in the exercise of its powers under subsections (a), (b), and (c) of section 10, to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

Section 19 (15 U.S.C. 77s) of the 1933 Act also gives the Commission general authority to make such rules and regulations as may be necessary to carry out the provisions of the Act, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers.

In view of the special problems of investment companies under the general pattern of regulation under the 1933 Act, the fact that advertisements in newspapers and magazines of general circulation are open to public scrutiny, and the impracticality of advertising in these public media by means of the summary prospectus permitted by rule 434a, the Commission is considering adopting a rule under section 10(b), 19(c), 10(d), 10(f), and 19(a) of the 1933 Act that would deal only with brief advertisements on behalf of investment companies in newspapers and magazines of general circulation. It is not proposed that the rule would apply to radio or television where the advertising techniques are broader and possibly contain a greater potential for abuse. The Commission requests comments on whether the proposed rule also should apply to radio and television advertisements.

The proposed rule would not permit investment companies to use a new form of written communication in direct mailings that would supplant the summary prospectus as presently permitted. Furthermore, the proposed rule, like the present newspaper prospectus rule, rule 494 (17 CFR 230.494, would not apply to reprints, reproductions or detached copies of a permitted advertisement. Such reprints, however, could be used as sales literature so long as they were preceded or accompanied by a section 10(a) prospectus.

The proposed rule would apply to advertisements for closed-end as well as open-end companies. With respect to closed-end companies, it would apply when the company was offering securities and a current section 10(a) prospectus was available to be sent to inquiring investors. It would be relevant only when the company was offering securities. At other times, of course, a closed-end company, unlike an open-end company which is always offering its securities, can make information about the company available to investors, such as by circulating an annual report, without being considered to be making an offer of its securities.

(A) The information that may be contained in an advertisement under the proposed rule.

Advertisements made pursuant to the proposed rule would be limited to information the substance of which is contained in a section 10(a) prospectus. This is proposed because section 10(b) permits the Commission only to authorize the use of a prospectus for the purpose of subsection (b)(1) of section 5 which omits in part or summarizes information "in the prospectus specified in section 10(a)". Therefore, any information in an advertisement permitted under section 10(b) must be limited to information which is in the prospectus specified in section 10(a). This includes information that is voluntarily put into the section 10(a) prospectus as well as information required to be there. However, the words used in an advertisement to convey an idea would not have to be the exact words that were used in the section 10(a) prospectus to convey the same idea, and advertising techniques could be used to convey information contained in the section 10(a) prospectus even though such techniques are not themselves part of the section 10(a) prospectus so long as any such technique would not tend to mislead an investor.[1]

(B) Any advertisement made pursuant to the proposed rule under section 10(b) would be subject to those provisions in the securities laws and the rules thereunder which deal with false or misleading statements.

Any advertisement made pursuant to the proposed rule under section 10(b) would not be excepted from the definition of a prospectus. It could, therefore, serve as a basis for rescission or damages under section 12(2) (15 U.S.C. 771(2)) of the 1933 Act if it contained a materially untrue statement or omitted to state a material fact necessary to make the statements made, in the light of the circumstances in which they were made, not misleading. It might also serve as a basis for action under section 17(a) (15 U.S.C. 77q(a)) of the 1933 Act or section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) and rule 10b-5 (17 CFR 240.10b-5) thereunder.

Any advertisement would also be "sales literature" as that term is used in the "Statement Of Policy" (as Amended November 5, 1957) Investment Company Act Release No. 2621, and, thus, subject to the policy stated therein as to what constitutes materially misleading information.

In addition, with respect to advertising pursuant to the proposed rule, it is the Commission's position that whether any communication is or is not misleading with respect to a material fact will depend on all of the particular facts including the form as well as the content of a communication, the implications contained in and the inferences likely to be drawn as a result of the communication.

For example, information concerning investment company performance may be misleading if it implies, or is subject to an inference, that prospective investors may expect performance or quality of investment advice similar to that suggested by the performance data provided, if there are additional data, with respect to the competence of the investment adviser or otherwise, which are known to, or in the exercise of reasonable care, should be known to, the provider of the information and which are inconsistent with any such implication or inference.

In this connection, the reasonable care that is required, with respect to the adequacy of disclosure, is that of a vendor of securities and not that of a vendor of ordinary consumer goods which may be evaluated by inspection or are otherwise familiar to the user.

(C) Advertisements under the proposed rule are limited to 600 words, excluding required legends, and charts and graphs.

To preserve the section 10(a) prospectus as the primary selling document, it seems desirable that the length of advertisements be limited since they might otherwise tend to cause investors mistakenly to regard the section 10(a) prospectus as superfluous. While advertisements should not be so long as to cause this to happen, they should be long enough to provide whatever information is necessary to prevent the information that is contained from being misleading.

The proposed limit is on the number of words that may be contained in an advertisement under the rule. Other limits may be as efficient as a word limit and, perhaps, more practical. The Commission invites suggestions in this regard.

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[1] In this connection see "Donaldson v. Read Magazine, Inc.," 333 U.S. 178 (1948), in which the United States Supreme Court said: Advertisements as a whole may be completely misleading although every sentence separately considered is literally true. This may be because things are omitted that should be said, or because advertisements are composed or purposely printed in such way as to mislead. * * * Questions of fraud may be determined in the light of the effect advertisements would most probably produce on ordinary minds.

Id. at 188-89 (citation omitted). See also "In the Matter of Dow Theory Forecasts, Inc." 43 SEC 821, (1967-1969 Transfer Binder) Fed. Sec. L. Rep. (CCH) para. 77,580 (July 22, 1968); pp. 13-14 infra.

In fixing the word limitation, a limit was sought that would satisfy the previously mentioned criteria. The length of randomly selected advertisements on the financial pages of newspapers and magazines was also considered. These consideraitons have led to the proposal of a word limit of 600 words, excluding required legends, and charts and graphs.

The question of whether it would be sufficient to limit a permitted advertisement to "about" 600 words was also examined. Although such a requirement would provide a degree of flexibility, it would lead to interpretative questions and probably result in some other absolute figure such as 650 or 699 becoming the limit. Thus, the proposal contains an absolute limit.

Consideration was given to the idea that it might be sufficient to require that an advertisement under any new rule, like an advertisement under rule 134, merely be "brief." While there is merit in this approach, in that it permits flexibility, it may give rise to problems of interpretation despite its apparent simplicity. First, even though rule 134 permits advertisements which contain only particular classes of information, questions have frequently arisen as to whether advertisements purportedly under rule 134 satisfy the requirement of the rule that they be brief. Questions concerning the meaning of the word "brief" would be even more likely under a rule which would permit any information in the section 10(a) prospectus to be included in an advertisement. Second, many questions of interpretation under a new rule are likely to arise and it would appear desirable to use objective, definite criteria, if feasible. Third, a rule should be precise enough to provide guidance and, thus, justify enforcement. For these reasons, the proposed rule contains precise limits on length. However, the Commission seeks comment on whether it would be sufficient, in this connection, to require only that an advertisement be brief or whether any specific reference to brevity is necessary to preserve the section 10(a) prospectus as the primary selling document.

(D) The proposed rule requires any advertisement under the rule to state from whom a section 10(a) prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing.

The 1933 Act intended the section 10(a) prospectus to be the primary selling document. Nevertheless, an investor can purchase a security which he learns about from an advertisement or a salesman before receiving a section 10(a) prospectus. Therefore, to preserve the section 10(a) prospectus as the primary selling document while liberalizing what may be included in advertising, it is necessary that the advertisement itself state from whom a section 10(a) prospectus may be obtained, that such prospectus contains more complete information than is contained in the advertisement, and that an investor should read the section 10(a) prospectus carefully before investing.

The proposed rule requires that this statement be "conspicuous." It does not specify the size, or type face to be used.

(E) The proposed rule requires any advertisement under the rule used prior to the effectiveness of a registration statement to carry the legend required by rule 433(b) (17 CFR 230.433(b)) but does not require advertisements under the rule to carry the legend required in all prospectuses by rule 425 (17 CFR 230.425).

If an advertisement is used prior to effectiveness of a registration statement (but after the registration statement has been filed), the advertisement must contain the statement required by rule 433(b) under the 1933 Act.[2] However, it does not seem necessary that advertisements under the rule also carry the legend required in all prospectuses by rule 425.[3]

(F) An advertisement made pursuant to the proposed rule is not required to be filed as part of a registration statement but is required to be filed with the Commission shortly after use.

Section 10(b) provides that a prospectus permitted thereunder shall, except to the extent the Commission, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 11(a) (15 U.S.C. 771(a)).[4]

If an advertisement under the proposed rule was required to be filed as part of a registration statement, the effect would be to require pre-clearance by the staff of any advertisement made pursuant to the rule. This would impede the advertising process and, for the following reasons, it does not appear to be necessary.

(1) The proposed rule would require that any advertisement mad pursuant to the proposed rule be filed with the Commission not later than the first day the Commission is open for business following the day such advertisement is first used, so that the staff can monitor such use at least on a random basis. This would enable the Commission to exercise the power given to it by section 10(b) to prevent or suspend the use of an advertisement pursuant to a rule under the section if it has reason to believe that the advertisement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such advertisement is, or is to be, used, not misleading. (2) Advertisements under the rule would be limited to information the substance of which must be included in the section 10(a) prospectus. Thus, while an advertisement itself would not be a basis for liability under section 11(a) of the 1933 Act, the substance of any information in the advertisement would have had to have been in the registration statement, which is subject to section 11(a) when it becomes effective. The substance of any information included in an investment company advertisement would, therefore, be information with respect to which directors, accountants, underwriters, or others might be liable to purchasers of the company's securities if it was false or misleading and if it was included in the registration statement when it becomes effective. (3) Because the investment company concerned is in the best position to know whether an advertisement about the company is misleading and because the company may be liable if it is, the proposed rule requires the investment company to file an advertisement made pursuant to the rule with the Commission. The company could, of course, delegate the task of filing the advertisement to another person such as its underwriter. Under the proposed rule, therefore, an investment company or its designated agent would have to approve advertisements for the company which are made pursuant to the rule.

Therefore, the Commission proposes to except advertisements made pursuant to rule 434d from the requirement that they be filed as part of a registration statement.

Filings under the rule would be accepted as satisfying the requirement of section 24(b) (15 U.S.C. 80a-24(b)) of the 1940 Act which makes it unlawful for certain investment companies, i.e., open-end companies, unit investment trusts, and face-amount certificate companies, of their underwriters, in connection with a public offering of any security of which such a company is the issuer, to make use of the mails or other instrumentalities of interstate commerce to transmit advertisements and other sales literature addressed to or intended for distribution

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[2] Rule 433(b) requires the outside front cover page of a prospectus used prior to the effective date of a registration statement to contain the following statement. "A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state."

[3] Rule 425 requires that the following legend be set forth on the front page of any prospectus: "These securities have not been approved or disapproved by the Securities and Exchange Commission nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense."

[4] Section 11(a), generally, makes directors, professionals, underwriters, etc. liable to purchasers of securities in case a part of a registration statement for which they are responsible, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein not misleading.

to prospective investors unless three copies have been filed with the Commission or are filed with the Commission within ten days thereafter. In other words, duplicate filings would not be required.

III. INTERPLAY OF THE PROPOSED RULE AND RULE 134

Although the simultaneous existence of rule 134 in its expanded form and a new rule under section 10(b) would introduce an additional complexity, the Commission does not propose to revoke rule 134 in its expanded form as it applies to investment companies. Some persons might choose to rely on rule 134 for the following reasons: (1) The information contained in an advertisement permitted by the new rule would be limited to information included in a section 10(a) prospectus, while an advertisement under rule 134 is not so limited, (2) an advertisement under the new rule, unlike an advertisement pursuant to rule 134, would be a prospectus subject to the provisions of section 12(2) of the 1933 Act, and (3) the Commission could by its own order halt the use of an advertisement made under the proposed rule if the rule was not complied with or if it believed that the advertisement was misleading.

It is possible that certain advertisements may comply with the provisions of rule 134 and not with the provisions of the new rule, other advertisements may comply with the provisions of the new rule and not with rule 134, and some advertisements may comply with both.

When compliance of an advertisement with the provisions of rule 134 is in doubt, it is expected that the advertisement would be filed pursuant to the new rule so long as it complies with the provisions of that rule. Filing under the new rule would not, however, be deemed a waiver of any claim that the advertisement also satisfies the provisions of rule 134. It would, ordinarily, not be necessary to determine whether any advertisement complied with both the new rule and rule 134. Compliance with one or the other would be sufficient to permit the advertisement.

IV. PROPOSED AMENDMENT TO RULE 134

Prior to 1972, rule 134, the "tombstone rule," permitted inclusion of the name of the issuer, the full title of the security, the amount being offered and a brief description of the general type of business of the issuer, limited in the case of an investment company registered under the 1940 Act to certain specified information.

After liberalizing amendments in 1972, the rule was further amended in 1974 to permit additional information with respect to an open-end investment company whose registration statement under the 1933 Act is effective and whose securities are the subject of a continuous offering pursuant to such registration statement.

In 1975, the rule was amended again to make use of the expanded investment company advertisement permissible "for any investment company issuing redeemable securities whose registration statement under the 1933 Act is effective."

Prior to the 1974 amendment some advertisements of investment companies, with and without effective registration statements, described the company's objectives and policies in the course of indicating whether in the selection of investments emphasis was placed upon income or growth characteristics.

Under the present rule, such a description can be used only in an advertisement of an investment company issuing redeemable securities which has an effective registration statement. The amendments, therefore, may be deemed to prohibit pre-effective advertising that was permissible prior to the amendments. This, however, was not the intent of those amendments.

The Commission, has, therefore, reconsidered the question of whether the expanded tombstone should be restricted to investment companies issuing redeemable securities which have effective 1933 Act registration statements and proposes to amend rule 134 so as to permit the use of the expanded tombstone advertisement during the so-called waiting period; i.e., the time between the filing of a registration statement and the time the statement becomes effective, as well as after the registration statement becomes effective. If, in response to an advertisement made prior to effectiveness, an investor requests that a statutory prospectus be sent to him, he can be sent prospectus which meets the requirements of Rule 433.

TEXT OF PROPOSED RULE 434d AND AMENDED RULE 134

Rule 434d as proposed would read as follows:

§ 230.434d Advertisement by an investment company as satisfying requirements of section 10.

(a) An advertisement shall be deemed to be a prospectus under section 10(b) of the Act for the purpose of section 5(b)(1) of the Act if:

(1) It is with respect to an investment company registered under the Investment Company Act of 1940 which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act,

(2) It appears in a newspaper or magazine of general circulation,

(3) It contains only information the substance of which is included in the section 10(a) prospectus,

(4) It states, conspicuously, from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing,

(5) It is limited to not more than 600 words, excluding required legends, and charts and graphs, and

(6) It contains the statement required by § 203.433(b) when used prior to effectiveness of the registration statement.

(b) An advertisement made pursuant to paragraph (a) of this section need not contain the statement required by § 230.425.

(c) An advertisement made pursuant to paragraph (a) of this section need not be filed as part of the registration statement filed under the Act, but three copies of any such advertisement shall be filed with the Commission under this section by the investment company concerned not later than the end of the first business day the Commission is open following the day the advertisement first appears, and any such advertisements shall be subject to the suspension powers of the Commission under section 10(b) of the Act.

Insofar as is relevant here, rule 134, as amended, would read as follows with the material to be deleted in brackets:

§ 230.134 Communications not deemed a prospectus.

The term "prospectus" as defined in section 2(10) of the act shall not include a notice, circular, advertisement, letter, or other communication published or transmitted to any person after a registration statement has been filed if it contains only the statements required or permitted to be included therein by the following provisions of this section:

(a) Such communication may include any one or more of the following items of information which need not follow the numerical sequence of this paragraph.

* * * * *

(3) A brief indication of the general type of business of the issuer, limited to the following:

* * * * *

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company's classification and subclassification under the Act * * * any graphic design or device or an attention-getting headline, not involving performance figures, designed to direct the reader's attention to textual material included in the communication pursuant to other provisions of this rule, and with respect to an investment company issuing redeemable securities [whose registration statement under the Act is effective] (A) a description of such company's investment objectives and policies, services, and method of operation * * *."

All interested persons are invited to submit their views and comments on the proposed rule and the proposed amendment in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before July 25, 1977. All such communications should refer to File No. S7-705 and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary

JUNE 8, 1977.

[FR Doc.77-16868 Filed 6-13-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 15, 25, 808]

[Docket No. 77N-0110]

EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL DEVICE REQUIREMENTS

Proposed Procedures for Consideration of Applications

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal prescribes the procedures for applying to the Food and Drug Administration (FDA) for an exemption from the Federal preemption provisions of the Medical Device Amendments of 1976. The act provides that, under certain conditions, FDA may exempt from preemption State or local medical device requirements that are different from, or in addition to, Federal requirements. It is also proposed that the final regulation become effective 60 days after its date of publication in the FEDERAL REGISTER. In the interim, this proposal will be used as a guideline for the processing of applications for exemption from preemption under section 521 of the act (21 U.S.C. 360k).

DATES: Written comments by August 15, 1977.

ADDRESSES: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Kenneth Baumgartner, Office of the General Counsel, Food and Drug Division (GCF-1), Department of Health, Education, and Welfare, Rm. 6-85, 5600 Fishers Lane, Rockville, MD 20857 (301-443-1345).

SUPPLEMENTARY INFORMATION: Section 521(a) of the Federal Food, Drug, and Cosmetic Act provides for preemption of State and local requirements applicable to medical devices intended for human use that are different from or in addition to requirements applicable under the act. Section 521(b) provides that FDA may, by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local medical device requirement from preemption under such conditions as the Commissioner may prescribe if the requirement is (1) more stringent than Federal requirements applicable to the device under the act, or (2) required by compelling local conditions and compliance with it would not cause the device to be in violation of any requirement applicable under the act.

STATUTORY BACKGROUND

Section 521 of the act provides:

STATE AND LOCAL REQUIREMENTS RESPECTING DEVICES

GENERAL RULE

SEC. 521. (a) Except as provided in subsection (b), no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement—

(1) Which is different from, or in addition to, any requirement applicable under this Act to the device, and

(2) Which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this Act.

EXEMPT REQUIREMENTS

(b) Upon application of a State or a political subdivision thereof, the Secretary may, by regulation promulgated after notice and opportunity for an oral hearing, exempt from subsection (a), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision applicable to a device intended for human use if—

(1) The requirement is more stringent than a requirement under this Act which would be applicable to the device if an exemption were not in effect under this subsection; or

(2) the requirement—

(A) Is required by compelling local conditions, and

(B) Compliance with the requirement would not cause the device to be in violation of any applicable requirement under this Act.

The legislative history of this section of the act is sparse. The single reference to the provision in the House Report accompanying the Medical Device Amendments of 1976 (Pub. L. 94-295, 90 Stat. 539-583 (21 U.S.C. 301 note)) provides:

The Committee recognizes that if a substantial number of differing requirements applicable to a medical device are imposed by jurisdictions other than the Federal government, interstate commerce would be unduly burdened. For this reason, the reported bill contains special provisions (new section 521 of the Act) governing regulation of devices by States and localities. First, the reported bill prescribes a general rule that no State or political subdivision thereof may establish or continue in effect any requirement with respect to a device for human use which is different from, or in addition to, any requirement made applicable to such a device under the proposed legislation or existing provisions of the Federal Food, Drug, and Cosmetic Act.

In the absence of effective Federal regulation of medical devices, some States have established their own programs. The most comprehensive State regulation of which the Committee is aware is that of California, which in 1970 adopted the Sherman Food, Drug, and Cosmetic Law. This law requires premarket approval of all new medical devices, requires compliance of device manufacturers with good manufacturing practices and authorizes inspection of establishments which manufacture devices. Implementation of the Sherman Law has resulted in the requirement that intrauterine devices are subject to premarket clearance in California.

Because there are some situations in which regulation of devices by States and localities would constitute a useful supplement to Federal regulation, the reported bill authorizes a State or political subdivision thereof to petition the Secretary for exemptions from the bill's general prohibition on non-Federal regulation. Under this provision, the Secretary may authorize imposition of a State or local requirement on a device if he finds (1) that the requirement is more stringent than a requirement under the Federal Food, Drug, and Cosmetic Act or (2) that it is required by compelling local conditions and compliance with the requirement would not cause the device to be in violation of a requirement under the Act.

In the Committee's view, requirements imposed under the California statute serve as an example of requirements that the Secretary should authorize to be continued (provided any application submitted by a State meets requirements pursuant to the reported bill) (H.R. 94-853, p. 45).

The Food and Drug Administration published in the FEDERAL REGISTER of February 15, 1977, two documents in which the application of section 521 was relevant. The first of these documents was a final rule (42 FR 9285) establishing regulations relating to professional and patient labeling and conditions for sale of hearing aids. The second was a proposed regulation (42 FR 9186) relating to an application for exemption from Federal preemption filed by the State of California. In the process of preparing these documents, the scope of the preemption provision of section 521 surfaced as a significant issue.

The Commissioner of Food and Drugs addresses the issue of the scope of preemption in proposed § 808.1. Consistent with his understanding of the intent of Congress, the Commissioner has narrowly construed the preemption provisions so that section 521(a) of the act preempts State and local requirements only when a particular Federal requirement becomes applicable to a particular device by operation of the act. This avoids disruption of vital State and local programs relating to the regulation of medical devices and reduces the possibility of a regulatory hiatus that could result if State or local requirements were considered preempted prior to the time FDA implemented Federal requirements. The potential for such a regulatory void is real since it will require several years for FDA to implement fully its device regulatory programs.

SCOPE OF REGULATIONS

Proposed § 808.1 describes the scope of the regulation. Section 521(a) of the act provides that effective on the date of enactment of the Medical Device Amendments of 1976 (May 28, 1976), no State or political subdivision of a State may establish or continue in effect any requirement having the force and effect of law with respect to a device intended for human use which is different from, or in addition to, any requirement applicable

to such device under the act. The Commissioner concludes that Congress intended section 521(a) to preempt State or local requirements applicable to medical devices only when a particular Federal requirement becomes applicable to a particular device by operation of the act, thereby making any existing divergent State or local requirements "different from or in addition to" FDA requirements.

Therefore, a preempting FDA requirement will become applicable to a device within the meaning of section 521(a) only after FDA takes a regulatory or administrative action involving the application of a particular requirement of the act to a particular device. For example, as noted in the recent regulation relating to professional and patient labeling and conditions for sale of hearing aids, State or local requirements that relate to such labeling requirements or conditions for sale will be preempted by section 521(a) on the effective date of the hearing aid regulation, August 15, 1977, unless the State or local requirements are substantially identical to the Federal requirements. The Commissioner notes, as discussed below, that State and local governments may, pursuant to section 521 (b) of the act, apply to FDA for an exemption from the preemption of section 521(a) for those State or local requirements that differ from FDA requirements.

The Commissioner also concludes that Congress did not intend to preempt a number of categories of State or local requirements that are concerned with medical devices. The primary example of these are State or local requirements that are equal to or substantially identical to, i.e., not "different from," requirements imposed by the act. Proposed § 808.1(d) lists a number of State or local requirements that FDA does not regard as preempted by section 521:

1. Section 521(a) does not preempt State or local requirements of general applicability that relate only incidentally to medical devices. Included in this category are general fire and electrical codes, the Uniform Commercial Code warranty requirements, and State or local unfair trade practice laws and regulations whose requirements apply to commodities in addition to medical devices. It is clear that Congress was concerned that if a substantial number of differing requirements applicable to devices were imposed by jurisdictions other than the Federal government, interstate commerce would be unduly burdened (H.R. 94-853, p. 45). There is no indication in the legislative history of section 521, however, that Congress intended that the section would preempt general purpose safety codes and similar statutes that only incidentally apply to devices. It is the Commissioner's opinion that section 521(a) was intended to preempt only those State or local laws that directly and specifically relate to devices.

2. Section 521(a), by its terms, applies only to those State or local requirements that are "different from, or in addition to" FDA requirements. Accordingly, as indicated above, the Commissioner concludes that the provision does not preempt those State or local requirements that are equal to or substantially identical to FDA requirements.

3. The Commissioner also concludes that section 521(a) does not preempt State and local permits, licenses, registrations, certifications, or other requirements relating to the approval or sanctions of the practice of medicine, dentistry, optometry, pharmacy, nursing, podiatry, or any other of the healing arts or allied medical sciences or related professions or occupations. Such regulations are not directly applicable to devices within the meaning of the act and, therefore, are not preempted. However, as noted in proposed § 808.1(d)(3), FDA may issue regulations relating to restrictions on the distribution and use of medical devices in research beyond those prescribed in State and local requirements. Such regulations are authorized under the act by sections 520(e) ("Restricted Devices") and 520(g) ("Exemption for Devices for Investigational Use") (21 U.S.C. 360j(e) and (g)). In such instances, FDA regulations would preempt any conflicting State or local restrictions.

4. Section 521(a) does not preempt those requirements of a State or local government that are related to conditions under which public funds may be used to purchase devices or to reimbuse suppliers under third-party payment programs. In addressing this issue in the February 15, 1977, hearing aid regulation, the Commissioner noted:

> The Commissioner has also determined that the preemption provision of section 521(a) of the act does not apply to rules or requirements established by Federal, State, or local agencies to control the expenditure of public funds for purchasing hearing aids and hearing health care services for the hearing impaired, i.e., third-party payment programs. Such requirements often establish standards for the screening and diagnosis of individuals who will receive hearing aids through publicly funded programs. These standards are to ensure the proper use of public funds. It is the Commissioner's view that such rules and requirements for the expenditure of public funds for hearing aids are payment criteria established by the payer or purchaser and do not represent "requirements with respect to a device" within the meaning of section 521(a) of the act.

5. Section 521(a) does not preempt general State or local law provisions governing the enforcement of requirements applicable to medical devices. Such general enforcement provisions are not themselves requirements applicable to medical devices within the meaning of section 521(a) of the act. However, as noted in proposed § 808.1(d)(6), FDA may issue regulations relating to records and reports and good manufacturing practices that are more restrictive than State or local laws. Such regulations are authorized under the act by sections 519, "Records and Reports on Devices," and 520(f), "Good Manufacturing Practice Requirements" (21 U.S.C. 360i and 360j (f)). In such instance, FDA regulations would preempt any conflicting State or local restrictions. Also, as noted in the regulation proposed February 15, 1977, relating to the application submitted by the State of California:

> The Commissioner notes that there are certain other provisions of the California law that are different from current Federal requirements, but that are not regarded as requirements with respect to a device within the meaning of section 521 of the act and thus are not regarded by the Commissioner as preempted under section 521(a) of the act. Examples are 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 prohibition of manufacture of devices in unlicensed establishments and of manufacture of adulterated or misbranded devices.

6. Section 521(a) does not preempt State or local provisions relating to the delegation of authority within State or local governments.

7. Section 521(a) does not preempt State or local requirements relating to the raising of revenue or the charging of fees for services or regulatory programs, such as registration fees for device manufacture or distribution charged by a number of States.

8. Finally, the Commissioner notes that a number of States have enacted laws or implemented rules or regulations under other Federal statutes. Examples of such Federal statutes include the Atomic Energy Act of 1954 (42 U.S.C. 2011 note), the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602 (42 U.S.C. 263b et seq.)), and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). As noted earlier, it is the Commissioner's opinion that the legislative history of section 521(a) indicates that Congress intended the section to preempt State or local requirements applicable to medical devices only when an FDA requirement becomes applicable to a particular device by operation of the act. FDA has not yet established any requirements for devices under the act of the kind covered by State radiations program requirements that have been developed under the Atomic Energy Act of 1954 and the Radiation Control for Health and Safety Act of 1968. Furthermore, while FDA has already established under the latter act radiation safety performance standards for medical devices that are electronic products, any corresponding State standards must be identical to those of FDA, thus alleviating Congress' concern that differing requirements imposed by jurisdictions other than the Federal Government might unduly burden interstate commerce. Accordingly, such existing State or local requirements are not now preempted by section 521(a) of the act.

At some future time, FDA may take steps to implement Federal requirements applicable to these types of devices which will result in the preemption of existing State radiation or other program requirements. If this occurs, affected States may petition FDA for exemption as provided in section 521(b) of the act. To

alert State and local governments of such possibilities, future FEDERAL REGISTER announcements of FDA actions under the act that involve medical devices will discuss the preemption impact of the proposed actions on differing or additional State or local requirements including those requirements imposed by States under the purview of other Federal statutes.

The Commissioner notes that under proposed § 808.1(e), FDA has the authority to determine initially whether a State or local requirement is equal to or substantially identical to a requirement under the act, i.e., to make the initial determination of whether a State or local requirement applicable to a device is preempted. However, the State and local governments have a concurrent obligation to seek advice from FDA with respect to their own particular statutes, rules, and regulations to determine whether these are preempted and if so, to seek exemptions from preemption when necessary and when desired by these jurisdictions.

The Commissioner may grant an application for exemption from preemption if he determines that (1) the requirement for which the exemption is sought is more stringent than a requirement under the act applicable to the device, or that (2) the requirement is required by compelling local conditions existing in the State or local community and compliance with the requirement would not cause the device to be in violation of any applicable Federal requirement under the Federal Food, Drug, and Cosmetic Act. The Commissioner notes that the granting of an exemption to a State or local requirement, i.e., the reinstatement of such State or local laws, has no bearing on the force and effect of the concurrent Federal requirements under the Federal Food, Drug, and Cosmetic Act. The Federal requirements apply regardless of whether the State or local requirements are preempted. The Commissioner notes, parenthetically, that under Article VI of the Constitution, when a State regulation stands side by side with a Federal regulation on the same topic, the State law must yield to the Federal requirement when there is a direct conflict between the two. See *Chemical Specialties Manufacturers Assn.* v *Clark*, 482 F. 2d 325 (1973), citing *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963). Such preemption occurs by operation of basic principles of constitutional law independent of the provisions of a specific statute addressing the issue such as section 521 of the act.

DEFINITIONS

The Commissioner has defined the term "compelling local conditions" in proposed § 808.3(b) to include any factors, considerations or circumstances prevailing in, or characteristic of, the geographical area or population of the State or political subdivision to justify exemption from preemption. A compelling local condition must be sufficient to meet the general congressional intent of preventing unnecessary multiple governmental requirements that could unduly burden interstate commerce. The local condition or conditions must be sufficiently compelling to make the different or additional State or local requirement necessary, and thus, not unduly burdensome to interstate commerce.

The definition of "State" in proposed § 808.3(e) is broader than the definition of State under the act. The Commissioner notes that the congressional intent in section 521(a) is to address the question of preemption of all jurisdictions other than the Federal government, and accordingly the definition has been expanded to include the various territories of the United States.

ADVISORY OPINIONS

Proposed § 808.5 establishes procedures by which a State or political subdivision, or any other interested person, may request an advisory opinion from FDA concerning any general matter relating to the preemption of a State or local regulation relating to medical devices. The procedures relating to such an advisory opinion are those established in the FDA procedural regulation under § 10.85 *Advisory opinions* (21 CFR 10.85, formerly § 2.19 prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)).

The Commissioner, in his discretion, also may treat a request for an advisory opinion as an application for an exemption from preemption. Ordinarily, this would be done only after consultation with the State or political subdivision involved. The purpose of this provision is to expedite the proceedings when the Commissioner tentatively concludes that an existing or proposed State or local requirement is preempted by section 521 (a) of the act, and the Commissioner also has tentatively determined that an application for exemption should receive favorable consideration. This will permit the processing of such application for exemption without any additional submissions by the State or political subdivision.

The Commissioner also may issue an advisory opinion relating to the impact of section 521 upon particular State or local requirements when he determines, after consideration of an application for exemption, that a State or local requirement is not preempted because it (1) is equal to or substantially identical to an FDA requirement, or (2) is not "a requirement" applicable to a device within the meaning of section 521 or because there is no such particular FDA requirement applicable to the device. Examples of the latter category of items are discussed above in the consideration of the scope of section 521.

An advisory opinion might also be sought or issued when a State or local government is contemplating the issuance of a statute or regulation. In such cases, the advisory opinion could address the question of whether the rule or regulation as proposed would be preempted by section 521(a), and, more importantly, if it would be preempted, whether the Commissioner is inclined to grant an exemption from preemption as permitted by section 521(b) of the act.

APPLICATION FOR EXEMPTION FROM PREEMPTION

Proposed § 808.20 contains the procedures by which a State or a political subdivision may apply to FDA for an exemption from preemption. An exemption will be granted only for those device-related requirements that have the force and effect of law, i.e., have been enacted, promulgated or issued in final form. However, an application may be submitted after the establishment of the statute or regulation by the State or local government, but before the effective date of the requirement.

It is proposed that the application for exemption be in the form of a letter to the Commissioner signed by an individual authorized to request the exemption on behalf of the State or political subdivision. The letter must be accompanied by sufficient information and data to enable FDA to make the determinations required by law: whether the statute in question is preempted by section 521(a) and, if so, whether the Commissioner should grant the exemption as provided in section 521(b). Included in the material that must be submitted are copies of the relevant statutes, rules, regulations, or ordinances, including reference to the dates of enactment or issuance in final form. The Commissioner also proposes to require the submission of copies of relevant background material including legislative histories, hearing reports, and similar materials to enable the Commissioner to determine the intent of the State or local ordinance or statute. The Commissioner also must know whether the statute, rule, or regulation has been subject to judicial or administrative interpretations that give it legal meanings within the State or political subdivision that are not readily apparent from the face of the document. If such judicial or administrative determinations have been made, copies of these opinions must be submitted to FDA.

Section 521(b) of the act permits the Commissioner to grant an exemption only when he determines that (1) the requirement is more stringent than a requirement under the act applicable to a device or (2) that the State or local requirement is required by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any applicable Federal requirement under the Federal Food, Drug, and Cosmetic Act. These two alternative bases for granting an exemption must be addressed in detail in submissions made by the State or local governments to FDA. The name and title of the chief administrative or legal officer of the State or local agency that has the primary responsibility for the administration of the requirement in question also must be furnished. This will provide FDA with a contact person who can expeditiously resolve questions of fact or interpretation not resolved by the

submissions accompanying the application, and who can correct other deficiencies, if any, in the application.

There may be situations in which a State or local government is involved in litigation regarding the applicability of a preempted, or arguably preempted, State or local requirement applicable to a device. In such cases, the State or local government should indicate this to the Commissioner and request an expedited action on its application, as provided in proposed § 808.20(d).

PROCEDURES FOR PROCESSING AN APPLICATION FOR EXEMPTION

Proposed § 808.30 contains the procedures by which FDA will process an application for exemption from preemption submitted in accordance with proposed § 808.20. Upon receipt of an application, the Commissioner shall notify the State or local government involved and inform it of any deficiencies in the application as submitted. Thereafter, the Commissioner shall review the application to determine whether to grant or deny an exemption from preemption.

The Commissioner's decision either to grant or to deny a State or local government's application for preemption will be published as a notice of proposed rule making in the FEDERAL REGISTER. This proposed regulation would provide an opportunity for the State or political subdivision, or other interested persons, such as affected manufacturers, distributors, trade associations, or consumer groups, to submit written comments concerning the proposed regulation within the period of time prescribed in the proposal. Generally, 60 days will be allowed for submission of comments, although for good cause, e.g., upon a request for expedited consideration of an application where litigation is pending, the Commissioner may provide for a shorter comment period.

The Commissioner shall also publish in the FEDERAL REGISTER a notice of opportunity for an informal oral hearing. This hearing is a Public Hearing Before the Commissioner as provided in Part 15 of the FDA procedural regulations (21 CFR Part 15, formerly Subpart E of Part 2, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)), and is a legislative type hearing. The procedures set out in Part 15 will govern at such hearings.

A request for an oral hearing must be submitted to the Hearing Clerk, Food and Drug Administration, within the time prescribed in the FEDERAL REGISTER notice. This request also must include a complete explanation of why an oral hearing, rather than the submission of written comments, is essential to the presentation of views on the application and the resolution of any issues relating to the exemption from preemption set out in the proposed regulation.

If a timely request for an oral hearing is made, and the Commissioner determines that such request is in the public interest, he may grant a request by publishing a notice of the hearing in accordance with § 15.20(e) (21 CFR 15.20(e), formerly § 2.401(e), prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)). The scope of any such hearing would be limited to matters relevant to the application for exemption.

If a request for an oral hearing is not timely made, or if a notice of appearance is not filed in accordance with § 15.21 (21 CFR 15.21, formerly § 2.402, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)), the Commissioner shall determine whether to grant the application based on all written comments submitted. Following this determination, a final regulation shall be published in the FEDERAL REGISTER.

The Commissioner, after considering the written comments and the record of oral hearing, if any, shall publish a final rule in the FEDERAL REGISTER indicating any requirement in the application for which exemption from preemption is granted by the Commissioner, or, where appropriate, conditionally granted, and any requirement for which exemption from preemption is not granted. These would be codified in proposed § 808.40, and listed under the name of the State or local government. In granting an application for exemption, the Commissioner may, where necessary, make such exemption conditional on the State or local jurisdiction following certain procedures or requirements.

The Commissioner may only grant an application for exemption when he determines either that the State or local requirement is more stringent than a requirement under the act applicable to a device, or that the requirement is required by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any requirement under the act. The Commissioner shall not grant an application for exemption if he determines that the application does not meet one of these two criteria.

The Commissioner notes that an advisory opinion granted pursuant to proposed § 808.5 or a rule issued pursuant to proposed § 808.30(g) (whether granting or denying an application for exemption from preemption) constitutes final agency action and is subject to judicial review. See § 10.45 of FDA procedural regulations (21 CFR 10.45, formerly § 2.11, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)).

REVOCATION OF AN EXEMPTION

Proposed § 808.35(a) states that an exemption from preemption remains in effect until the Commissioner by regulation revokes the exemption for the reasons given in proposed § 808.33(b) as follows:

First, an exemption may be revoked upon the effective date of a newly established FDA requirement under the Federal Food, Drug, and Cosmetic Act which, in the Commissioner's view, addresses the objectives of the exempt requirement and which is described, when issued, as preempting a previously exempt State or local requirement. An example of the application of this provision is noted in the recently published regulation relating to professional and patient labeling and conditions for sale of hearing aids. If, at the time of issuance of these regulations, an exemption from preemption had been in effect for State and local requirements relating to such requirements for hearing aids, the State and local requirements would nevertheless have been preempted upon the issuance of the FDA hearing aid regulations. (See the February 15, 1977 hearing aid regulation, at p. 9293.)

Second, an exemption may be revoked upon a finding that there has been a change in the circumstances upon which the exemption was originally granted by the Commissioner. For example, there may no longer be compelling State or local conditions that justify the continued additional burdens on interstate commerce resulting from the granting of the exemption.

Third, an exemption may be revoked if it is determined that a condition placed on the exemption has not been met or is no longer being met.

Fourth, an exemption may be revoked if the State or local jurisdiction involved fails to comply with the requirements of proposed § 808.20(c)(6) concerning the submission of any records with respect to the administration of any requirement which is the subject of an exemption or an application for an exemption from preemption under this part. The Food and Drug Administration may determine that it is necessary to know how a requirement subject to an exemption is being administered (or not administered) in a way that is inconsistent with the basis for initially granting the exemption. Also, FDA must be able to determine if a requirement is no longer required by compelling local conditions. Moreover, if FDA granted a State or locality an exemption for a regulatory program that is in addition to a Federal regulation, and decided simultaneously to await results of a State program before undertaking a similar program, the agency may need to know how the State or local program is administered to ensure the correctness of its decision not to enter the field itself because of the adequacy of the State program.

Fifth, an exemption may be revoked if a State or local jurisdiction to whom the exemption was originally granted requests FDA to revoke the exemption.

Sixth, an exemption may be revoked if the Commissioner determines that the exemption is no longer in the best interest of the public health.

The procedures for revoking an exemption shall be, in general, the same as those for granting an exemption as provided in proposed § 808.25. The Commissioner may, however, permit modifications in the requirements related to the submission of documents and other materials to avoid unnecessary submissions and to expedite the proceedings.

PROPOSED AMENDMENTS TO OTHER REGULATIONS

The Commissioner is proposing technical amendments to Part 15, relating to administrative functions, practices, and procedures, and to Part 25, relating to environmental impact considerations, to make them consistent with proposed Part 808. Specifically, §§ 15.1 and 25.1 would be amended by inserting applicable references to preemption exemption regulations.

PROPOSED EFFECTIVE DATE

The Commissioner proposes to make the final regulations relating to this proposal effective 60 days after their date of publication in the FEDERAL REGISTER.

The Commissioner has carefully considered the economic impact of the proposed regulations as required by Executive Order 11821 (amended by Executive Order 11949), OMB Circular A-107, and the Guidelines issued by the Department of Health, Education, and Welfare, and no major economic impact has been found. A copy of the economic 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, 90 Stat. 574 (21 U.S.C. 360k, 371)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

1. In Part 15, by amending § 15.1 by revising paragraph (b) to read as follows:

§ 15.1 Scope.

* * * * *

(b) Pursuant to specific provisions in other sections of this chapter, a matter pending before the Food and Drug Administration is subject to a public hearing before the Commissioner. Such specific provisions are in § 330.10(a)(8) of this chapter relating to review of the safety, effectiveness, and labeling of over-the-counter drugs, and in Part 808 of this chapter relating to exemptions from preemption of requirements for devices.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

2. In Part 25, by amending § 25.1 by adding a new paragraph (d)(6) to read as follows:

§ 25.1 Applicability.

* * * * *

(d) * * *

(6) Promulgation of a regulation exempting from preemption a requirement of a State or political subdivision concerning a device, or publication of a notice denying an application for such exemption.

* * * * *

3. In Subchapter H, by adding new Part 808, to read as follows:

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

Subpart A—General Provisions

Sec.

808.1 Scope.
808.3 Definitions.
808.5 Advisory opinions.

Subpart B—Exemption Procedures

808.20 Application.
808.25 Procedures for processing an application.
808.35 Revocation of an exemption.

Subpart C—Listing of Specific State and Local Requirements That Have Been the Subject of Food and Drug Administration Action on Applications for Exemption From Preemption [Reserved]

* * * * *

AUTHORITY: Secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371).

Subpart A—General Provisions

§ 808.1 Scope.

(a) This part prescribes procedures for the submission, review, and approval of applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the act.

(b) Section 521(a) of the act contains special provisions governing the regulation of devices by States and localities. That section prescribes a general rules that after May 28, 1976, no State or political subdivision of a State may establish or continue in effect any requirement with respect to a medical device intended for human use having the force and effect of law (whether established by statute, regulation, or by court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act.

(c) Section 521(b) of the act contains a provision whereby the Commissioner of Food and Drugs may, upon application by a State or political subdivision, allow imposition of a requirement which is different from, or in addition to, any requirement applicable under the act to the device (and which is thereby preempted) by promulgating a regulation in accordance with this part exempting the State or local requirement from preemption. The granting of an exemption does not affect the applicability to the device of any requirements under the act. The Commissioner may promulgate an emption. The granting of an exemption requirement if he makes either of the following findings:

(1) That the requirement is more stringent than a requirement under the act applicable to the device; or

(2) That the requirement is required by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any applicable requirement under the act.

(d) State or local requirements are preempted only when the Food and Drug Administration has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific Food and Drug Administration requirements. There are other State or local requirements that affect devices which are not preempted by section 521 (a) of the act because they are not "requirements applicable to a device" within the meaning of section 521(a). The following are examples of State or local requirements that are not regarded as preempted by section 521 of the act:

(1) Section 521(a) does not preempt State or local requirements of general applicability where the purpose of the requirement relates either to other products in addition to devices (e.g., requirements such as general electrical codes, and the Uniform Commercial Code (warranty of fitness), or to unfair trade practices in which requirements are not limited to devices.

(2) Section 521(a) does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act.

(3) Section 521(a) does not preeempt State or local permits, licenses, registrations, certifications, or other requirements relating to the approval or sanction of the practice of medicine, dentistry, optometry, pharmacy, nursing, podiatry, or any other of the healing arts or allied medical sciences or related professions or occupations that administer, dispsense, or sell devices. However, regulations issued under sections 520 (e) or (g) of the act may impose restrictions on the sale, distribution or use of a device beyond those prescribed in State or local requirements. If there is a conflict between such restrictions and State or local requirements, the Federal regulations shall prevail.

(4) Section 521(a) does not preempt specifications in contracts entered into by States or localities for procurement of devices.

(5) Section 521(a) does not preempt criteria for payment of State or local obligations under Medicaid and similar Federal, State or local health care programs.

(6) Section 521(a) does not preempt State or local requirements respecting general enforcement, e.g., requirements that State inspection be permitted of factory records concerning all devices, registration and licensing requirements for manufacturers and others, and prohibition of manufacture of devices in unlicensed establishments and prohibition of manufacture of adulterated or misbranded devices. However, Federal regulations issued under sections 519 and 520 (f) of the act may impose requirements for records and reports and good manufacturing practices beyond those prescribed in State or local requirements. If there is a conflict between such regu-

lations and State or local requirements, the Federal regulations shall prevail.

(7) Section 521(a) does not preempt State or local provisions respecting delegations of authority and related administrative matters relating to devices.

(8) Section 521(a) does not preempt a State or local requirement whose sole purpose is raising revenue or charging fees for services, registration or regulatory programs.

(9) Section 521(a) does not preempt State or local requirements of the type that have been developed under the Atomic Energy Act of 1954 (42 U.S.C. 2011 note), as amended, the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602 (42 U.S.C. 263b et seq.)) and other Federal statutes, until such time as the Food and Drug Administration issues specific requirements under the Federal Food, Drug, and Cosmetic Act applicable to these types of devices.

(e) It is the responsibility of the Food and Drug Administration, subject to review by Federal courts, to determine whether a State or local requirement is equal to, or substantially identical to, requirements imposed by or under the act, or is different from, or in addition to, such requirements, in accordance with the procedures of this part. However, it is the responsibility of States and political subdivisions to determine initially whether to seek exemptions from preemption. Any State or political subdivision whose requirements relating to devices are preempted by section 521(a) may petition the Commissioner of Food and Drugs for exemption from preemption, in accordance with the procedures of this part.

§ 808.3 Definitions.

(a) "Act" means the Federal Food, Drug, and Cosmetic Act.

(b) "Compelling local conditions" includes any factors, considerations, or circumstances prevailing in, or characteristic of, the geographic area or population of the State or political subdivision that justify exemption from preemption.

(c) "More stringent" refers to a requirement of greater restrictiveness or one that is expected to afford to those who may be exposed to a risk of injury from a device a higher degree of protection than is afforded by a requirement applicable to the device under the act.

(d) "Political subdivision" or "locality" means any lawfully recognized local governmental unit within a State which has the authority to establish or continue in effect any requirement having the force and effect of law with respect to a device intended for human use.

(e) "State" means a State, American Samoa, the Canal Zone, the Commonwealth of Puerto Rico, the District of Columbia, Guam, Johnston Island, Kingman Reef, Midway Island, the Trust Territory of the Pacific Islands, the Virgin Islands, or Wake Island.

§ 808.5 Advisory opinions.

(a) Any State, political subdivision, or other interested person may request an advisory opinion from the Commissioner with respect to any general matter concerning preemption of State or local device requirements or with respect to whether the Food and Drug Administration regards particular State or local requirements, or proposed requirements, to be preempted.

(1) Such an advisory opinion may be requested and may be granted in accordance with § 10.85 of this chapter.

(2) The Food and Drug Administration, in its discretion and after consultation with the State or political subdivision, may treat a request by a State or political subdivision for an advisory opinion as an application for exemption from preemption under § 808.20.

(b) The Commissioner may issue an advisory opinion relating to a State or local requirement on his own initiative when he makes one of the following determinations:

(1) A requirement with respect to a device for which an application for exemption from preemption has been submitted under § 808.20 is not preempted by section 521(a) of the act because it is (i) equal to or substantially identical to a requirement under the act applicable to the device, or (ii) is not a requirement within the meaning of section 521 of the act and therefore is not preempted;

(2) A proposed State or local requirement with respect to a device is not eligible for exemption from preemption because the State or local requirement has not been issued in final form. In such a case, the advisory opinion may indicate whether the proposed requirement would be preempted and, if it would be preempted, whether the Food and Drug Administration would propose to grant an exemption from preemption;

(3) Issuance of such an advisory opinion is in the public interest.

Subpart B—Exemption Procedures

§ 808.20 Application for exemption from preemption.

(a) Any State or political subdivision may apply to the Food and Drug Administration for an exemption from preemption for any requirement that is preempted. An exemption may only be granted for a requirement that has been enacted, promulgated, or issued in final form by the authorized body or official of the State or political subdivision so as to have the force and effect of law. However, an application for exemption may be submitted prior to the effective date of the requirement.

(b) An application for exemption shall be in the form of a letter to the Commissioner of Food and Drugs and shall be signed by an individual who is authorized to request the exemption on behalf of the State or political subdivision. Four copies of the letter and any accompanying material, as well as any subsequent reports or correspondence concerning an application, shall be submitted to the Hearing Clerk (HFC-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The outside wrapper of any application, report, or correspondence should indicate that it concerns an application for exemption from preemption of device requirements.

(c) For each requirement for which an exemption is sought, the application shall include the following information to the fullest extent possible, or an explanation of why such information has not been included:

(1) Identification and a current copy of any statute, rule, regulation, or ordinance of the State or political subdivision considered by the State or political subdivision to be a requirement which is preempted, with a reference to the date of enactment, promulgation, or issuance in final form. The application shall also include, where available, copies of any legislative history or background materials pertinent to enactment, promulgation or issuance of the requirement, including hearing reports or studies concerning development or consideration of the requirement. If the requirement has been subject to any judicial or administrative interpretations, the State or political subdivision shall furnish copies of such judicial or administrative interpretations.

(2) A comparison of the requirement of the State or political subdivision and any applicable Federal requirements to show similarities and differences.

(3) Information on the nature of the problem addressed by the requirement of the State or political subdivision.

(4) Identification of which (or both) of the following bases is relied upon for seeking an exemption from preemption:

(i) The requirement is more stringent that a requirement applicable to a device under the act. If a State or political subdivision relies upon this basis for exemption from preemption, the application shall include information, data, or material indicating how and why the requirement of the State or political subdivision is more stringent than requirements under the act.

(ii) The requirement is required by compelling local conditions, and compliance with the requirement would not cause the device to be in violation of any applicable requirement under the act. If the State or political subdivision relies upon this basis for exemption from preemption, the application shall include information, data, or material indicating why compliance with the requirement of the State or political subdivision would not cause a device to be in violation of any applicable requirement under the act and why the requirement is required by compelling local conditions, explaining in detail the compelling local conditions that justify the requirement.

(5) The name and the title of the chief administrative or legal officers of that State or local agency that has primary responsibility for administration of the requirement.

(6) When requested by the Food and Drug Administration, any records concerning administration of any requirement which is the subject of an exemption or an application for an exemption from preemption.

(7) Any other pertinent information respecting the requirement voluntarily submitted by the applicant.

(d) If litigation regarding applicability of the requirement is pending, the State or political subdivision may so indicate in its application and request expedited action on such application.

§ 808.25 Procedures for processing an application.

(a) Upon receipt of an application for an exemption from preemption submitted in accordance with § 808.20, the Commissioner shall notify the State or political subivision of the date of such receipt.

(b) If the Commissioner finds that an application does not meet the requirements of § 808.20, he shall notify the State or political subdivision of the deficiencies in the application and of the opportunity to correct such deficiencies. A deficient application may be corrected at any time.

(c) After receipt of an application meeting the requirements of § 808.20, the Commissioner shall review such application and determine whether to grant or deny an exemption from preemption for each requirement which is the subject of the application. The Commissioner shall then issue in the FEDERAL REGISTER a proposed regulation either to grant or to deny an exemption from preemption. The Commissioner shall also issue in the FEDERAL REGISTER a notice of opportunity to request an oral hearing before the Commissioner or his designee.

(d) A request for an oral hearing may be made by the State or political subdivision or any other interested person. Such request shall be submitted to the Hearing Clerk within the period of time prescribed in the notice and shall include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and the proposed regulation.

(e) If a timely request for an oral hearing is made, the Commissioner shall review such a request and may grant a legislative-type informal oral hearing pursuant to Part 15 of this chapter by publishing a notice of the hearing in accordance with § 15.20 of this chapter. The scope of the oral hearing shall be limited to matters relevant to the application for exemption from preemption and the proposed regulation. Oral or written presentations at the oral hearing that are not relevant to the application shall be excluded from the administrative record of the hearing.

(f) If a request for hearing is not timely made or a notice of appearance is not filed pursuant to § 15.21 of this chapter, the Commissioner shall consider all written comments submitted and publish a final rule in accordance with paragraph (g) of this section.

(g) (1) The Commissioner shall review all written comments submitted on the proposed rule and the administrative record of the oral hearing, if an oral hearing has been granted, and shall publish a final rule in Subpart C of this part indicating any requirement in the application for which exemption from preemption is granted, or conditionally granted, and any requirement in the application for which exemption from preemption is not granted.

(2) The Commissioner may issue a regulation granting or conditionally granting an application for an exemption from preemption for any requirement if he makes either of the following findings:

(i) The requirement is more stringent than a requirement applicable to the device under the act;

(ii) The requirement is required by compelling local conditions, and compliance with the requirement would not cause the device to be in violation of any requirement applicable to the device under the act.

(3) The Commissioner may not grant an application for an exemption from preemption for any requirement with respect to a device if he determines that the granting of an exemption would not be in the best interest of public health, taking into account the potential burden on interstate commerce.

(h) An advisory opinion pursuant to § 808.5 or a regulation pursuant to paragraph (g) of this section constitutes final agency action.

§ 808.35 Revocation of an exemption.

(a) An exemption from preemption pursuant to a regulation under this part shall remain effective until the Commissioner revokes such exemption.

(b) The Commissioner may by regulation, in accordance with § 808.25, revoke an exemption from preemption for any of the following reasons:

(1) An exemption may be revoked upon the effective date of a newly established requirement under the act which, in the Commissioner's view, addresses the objectives of an exempt requirement and which is described, when issued, as preempting a previously exempt State or local requirement.

(2) An exemption may be revoked upon a finding that there has occurred a change in the basis listed in § 808.20(c)(4) upon which the exemption was granted.

(3) An exemption may be revoked if it is determined that a condition placed on the exemption by the regulation under which the exemption was granted has not been met or is no longer being met.

(4) An exemption may be revoked if a State or local jurisdiction fails to submit records as provided in § 808.20(c)(6).

(5) An exemption may be revoked if a State or local jurisdiction to whom the exemption was originally granted requests revocation.

(6) An exemption may be revoked if it is determined that it is no longer in the best interests of the public health to continue the exemption.

(c) An exemption that has been revoked may be reinstated, upon request from the State or political subdivision, if the Commissioner, in accordance with the procedures in § 808.25, determines that the grounds for revocation are no longer applicable except that the Commissioner may permit abbreviated submissions of the documents and materials normally required for an application for exemption under § 808.20

Subpart C—Listing of Specific State and Local Requirements That Have Been The Subject of Food and Drug Administration Action on Applications for Exemption From Preemption [Reserved]

Interested persons may, on or before August 15, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments (in quadruplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: June 3, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc.77-16783 Filed 6-13-77;8:45 am]

[21 CFR Parts 137, 166, 172, 173, 175, 176, 177, 178, 180, 181 and 182]

[Docket No. 77N-0003]

BUTYLATED HYDROXYTOLUENE

Use Restrictions

Correction

In FR Doc. 77-15028 appearing at page 27603 in the issue for Tuesday, May 31, 1977 make the following corrections:

(1) The closing date for comments given on page 27603 and on page 27609 as July 26, 1977 should have been August 1, 1977.

(2) On page 27605, first column, eight lines from the bottom of the second full paragraph, the formula "$C_{15}H_{25}N.HCl$)" should have read "$(C_{15}H_{25}N.HCl)$".

(3) On page 27607, first column, the 7th line of the second paragraph now reading "the and the absence of and reported . . ." should be deleted and in its place inserted the following: "the noted difference in the metabolism of BHT in the rat and man, and the absence of any reported * * *".

(4) Also on page 27607, first column, the 5th line of the third paragraph now reading "the. and to provide further information * * *" should have read "the liver, and to provide further information * * *".

[21 CFR Parts 172, 182, 184, and 186]

[Docket No. 77N-0038]

CAPRYLIC ACID

Proposed Affirmation of GRAS Status as Indirect and Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Commissioner of Food and Drugs is proposing to affirm as generally recognized as safe (GRAS) caprylic acid as a direct and indirect human food ingredient. The safety of the ingredient has been evaluated pursuant to the comprehensive safety review being conducted by the agency. The proposal would list this ingredient as an indirect and direct food substance affirmed as GRAS.

DATE: Comments by August 15, 1977.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is conducting a comprehensive safety review of direct and indirect human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction. The Commissioner of Food and Drugs has issued several notices and proposed regulations, published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20040), initiating this review. Pursuant to this review, the safety of caprylic acid has been evaluated. In accordance with the provisions of § 170.35 (formerly § 121.40, prior to recodification in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), the Commissioner proposes to affirm the GRAS status of this ingredient.

Caprylic acid, $CH_3(CH_2)_6COOH$, is an eight carbon, saturated fatty acid. It occurs naturally in various foods and is synthesized by the oxidation of octanol. It is listed in § 182.3025 (formerly § 121.101(d)(2) prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), as GRAS for use as a chemical preservative in cheese wraps, pursuant to a regulation published in the FEDERAL REGISTER of November 20, 1959 (24 FR 9368), and subsequently recodified. It is also regulated in § 172.860 (formerly § 121.-1070 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), with other fatty acids pursuant to a regulation published in the FEDERAL REGISTER of December 9, 1961 ((26 FR 11829), subsequently recodified) for use in foods as a lubricant, binder, defoaming agent, or as a component in the manufacture of other food grade additives in accordance with good manufacturing practice.

The salts of caprylic acid are referred to in § 172.863 (formerly § 121.1071, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), (salts of fatty acids) pursuant to a regulation published in the FEDERAL REGISTER of December 9, 1961 ((26 FR 11829), subsequently recodified) for use in food as a binder, emulsifier and anticaking agent in food in accordance with good manufacturing practices. Caprylic acid is also listed in § 173.315 (formerly § 121.1091 prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), pursuant to a regulation published in the FEDERAL REGISTER of August 8, 1969 ((34 FR 12335), subsequently recodified) as an aliphatic acid in lye peeling solutions not to exceed one percent of the lye peeling solution. In addition, it is permitted as a synthetic flavoring substance and adjuvant as described in § 172.515 (formerly § 121.1164, prior to recodiccation published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302)), pursuant to a regulation published in the FEDERAL REGISTER of October 27, 1964 (29 FR 14625), and subsequently recodified.

A representative cross-section of food manufacturers was surveyed to determine the specific foods in which caprylic acid was used and at what levels. Information from surveys of consumer consumption was obtained and combined with the manufacturing information to obtain an estimate of consumer exposure to caprylic acid. The total amount of caprylic acid used in food in 1970 was reported to be 2,559 pounds.

Caprylic acid has been the subject of a search of the scientific literature from 1920 to the present. The parameters used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) any reported carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 169 abstracts on caprylic acid was reviewed and 50 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

The scientific literature review shows, among other studies the following information as summarized in the report of the Select Committee on GRAS Substances (hereinafter referred to as the Select Committee), selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology:

Caprylic acid occurs normally in various foods and is metabolized and utilized by the body as a non-essential fatty acid. It is absorbed in the gut and transported to the liver through the portal circulation as are other short chain fatty acids. For both the free acid and its triglycerides, absorption is about 93 to 98 percent complete in rats. Similar data have been obtained in a case of pediatric chylothorax confirming the animal studies.

Feeding caprylic acid for 47 weeks to rats as part of a preparation consisting of medium-chain triglycerides (75 percent octanoic acid and 25 percent decanoic acid) resulted in decreased fat deposition and in little, if any, deposition of caprylic acid in depot fat. Most of the caprylic acid appears to be oxidized to acetate and acetyl coenzyme A in the liver and in the intestinal mucosa without prior esterification. A number of other investigators have reported results that are consistent with this metabolic pathway. Studies with isotope-labelled caprylic acid in vivo and in vitro suggest that the rate of oxidation to acetoacetate, acetyl coenzyme A, and carbon dioxide is very rapid. An alternative pathway, such as palmitate synthesis was observed for a limited amount of the acid.

In human studies, 1.0 g per kg body weight of a mixture of medium-chain triglycerides containing 80 percent caprylic acid ingested by ten men and four women after an overnight fast, resulted in an elevation in blood serum ketone bodies and a fall in blood serum glucose. Using ^{14}C-caprylic acid, oxidation of the acid was found to occur in two males and two females on thyroid substitution therapy.

The oral LD_{50} for rats of mixed isomers of octanoic acid was reported as 1.41 ml per kg (estimated to be about 1.3 g). The intravenous LD_{50} of the glyceride tricaprylin for rats was found to be 3.7 g per kg. Intraperitoneal injection of sodium octanoate had a narcotic effect in rats but as much as 1 g per kg of body weight was without toxic effects. When young rats were fed a preparation consisting of medium-chain triglycerides (about 75 percent octanoic acid and 25 percent decanoic acid) as 19.6 percent of the diet for 47 weeks (more than 5 g of octanoic acid per kg body weight per day), no significant effects were observed on weight gain, or organ weight, or on histological examination of sections of liver and intestine. Fat deposition in the epididymal fat pad, liver, and carcass was reduced and a reduction in plasma cholesterol was noted in male rats. Rats were fed the same medium-chain triglyceride preparation at the 19.6 percent level for two generations and it caused no adverse effects on reproduction or abnormalities in any of the fetuses. A reduction in milk secretion was noted in first generation dams and was suggested by the authors as a factor in reduced weight gain and relatively higher mortality in the second generation.

Feeding caprylic acid at a level of 5 percent in the diet (about 3.5 g per kg per day) resulted in serum cholesterol and triglyceride levels that were somewhat lower than those produced by palmitic acid but higher than those produced by stearic acid when fed in a hyperlipemic diet to 160 g male rats for 6 weeks. Feeding 8 percent sodium caprylate (about 6 g per kg per day) in the diet of rapidly growing male rats for up to 56 days did not affect their ability to utilize dietary protein and energy sources efficiently.

The Select Committee has found no reports concerned with possible mutagenic, teratogenic, or carcinogenic effects associated with the feeding of caprylic acid.

All of the available safety information on caprylic acid has been carefully evaluated by qualified scientists of the Select Committee. It is the opinion of the Select Committee that:

Caprylic acid, a naturally occurring constituent of many foods, is absorbed and metabolized by man. Triglycerides containing this fatty acid are hydrolyzed in the intestinal mucosa and the liberated fatty acids are transported in the portal circulation and are almost completely oxidized in the liver. Significant oxidation also appears to occur in the intestinal mucosa. Little caprylic acid is stored, and long-term feeding at high levels results in decreased overall fat storage that is indicative of nutritional utilization. Thus caprylic acid is a fatty acid nutritionally utilizable by man and animals.

It is the conclusion of the Select Committee that there is no evidence in the available information on caprylic acid that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future. Based upon his own evaluation of all available information on caprylic acid, the Commissioner concurs with this conclusion. The Commissioner therefore concludes that no change in the current GRAS status of caprylic acid is justified.

He also concludes that the information generated for this safety review forms a sound scientific basis for affirming the GRAS status of caprylic acid as a synthetic flavoring agent and adjuvant. This use is now regulated by § 172.515. Therefore, the Commissioner proposes to delete the entry for this substance from that section, and to affirm it as GRAS for direct food use.

Copies of the scientific literature review on caprylic acid and the report of the Select Committee are available for review at the Office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22151, as follows:

Title	Order No.	Cost
Caprylic acid (scientific literature review).	PB-221-229	$4.50
Caprylic acid (select committee report).	PB-254-530/AS	3.50

This proposed action does not affect the present use of caprylic acid for pet food or animal feed. No revision is contemplated in § 172.860 (fatty acids) for the use of caprylic acid as a lubricant, binder, defoaming agent, or as a component in the manufacture of other food grade additives, or in § 172.863 where the salt of caprylic acid is regulated for use in food as a binder, emulsifier, and anticaking agent. Neither is a revision contemplated in § 173.315 where caprylic acid is regulated as an aliphatic acid in lye peeling solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371 (a))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Parts 172, 182, 184, and 186 be amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

§ 172.515 [Amended]

1. In § 172.515 *Synthetic flavoring substances and adjuvants* by deleting the entry for "Octanoic acid; caprylic acid" from the list of substances in paragraph (b).

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.3025 [Deleted]

2. By deleting § 182.3025 *Caprylic acid.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. By adding a new § 184.1025 to read as follows:

§ 184.1025 Caprylic acid.

(a) Caprylic acid [$CH_3(CH_2)_6COOH$, CAS Reg. 000124–07–2] is the chemical name for octanoic acid. It is considered to be a short or medium chain fatty acid. It occurs normally in various foods and is commercially prepared by oxidation of *n*-octanol or by fermentation and fractional distillation of the volatile fatty acids present in coconut oil.

(b) The ingredients meets the specifications of the Food Chemicals Codex, 2d Ed. (1972).[1]

(c) The ingredients is used as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter.

(d) The ingredient is used in foods at levels not to exceed good manufacturing practices. Current good manufacturing practices results in maximum levels, as served, of: 0.013 percent for baked goods as defined in § 170.3(n)(1) of this chapter; 0.04 percent for cheeses as defined in § 170.3(n)(5) of this chapter; 0.005 percent for fats and oils as defined in § 170.3(n)(12) of this chapter, for frozen dairy desserts as defined in § 170.3 (n)(20) of this chapter, for gelatins and pudding as defined in § 170.3(n)(22) of this chapter, for meat products as defined in § 170.3(n)(29) of this chapter, and for soft candy as defined in § 170.3 (n)(38) of this chapter; 0.016 percent for snack foods as defined in § 170.3(n) (37) of this chapter; and 0.001 percent or less for all other food categories.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. By adding a new § 186.1025 to read as follows:

§ 186.1025 Caprylic acid.

(a) Caprylic acid [$CH_3(CH_2)_6COOH$, CAS Reg. No. 000124–07–2] is the chemical name for octanoic acid. It is considered to be a short or medium chain fatty acid. It occurs normally in various foods and is commercially prepared by oxidation of *n*-octanol or by fermentation and fractional distillation of the volatile fatty acids present in coconut oil.

(b) The ingredient meets the specifications of the Food Chemcials Codex, 2d Ed. (1972).[1]

(c) The ingredient is used as an antimicrobial (preservative) in cheese wraps as defined in § 170.3(o)(2) at levels not to exceed good manufacturing practice.

The Commissioner hereby gives notice that he is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those proposed herein. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The regulation proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the act, and the failure of any person to come forward with proof of such an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on such sanction at any later time. This notice also constitutes a proposal to establish a regulation under Part 181 (21 CFR Part 181), incorporating the same provisions, in the event that such a regulation is determined to be appropriate as a result of submission of proof of such an applicable prior sanction in response to this proposal.

Interested persons may, on or before August 15, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments (preferably in quadruplicate) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. to 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A–107.

Dated: June 7, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77–16655 Filed 6–13–77;8:45 am]

[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, D.C. 20037.

DEPARTMENT OF STATE

[22 CFR Parts 123, 124]

[Docket No. SD–131]

INTERNATIONAL TRAFFIC IN ARMS

Approval of Major Sales Proposals

Correction

In FR Doc. 77–15806 appearing at page 28551 in the issue for Friday, June 3, 1977, make the following corrections:

1. In the preamble, in the paragraph labeled "DATES", the second and third lines were inverted. The second line

should appear immediately below the third line.

2. In the signature for Lucy Wilson Benson, delete the word "Acting". Lucy Wilson Benson's correct title is Under Secretary for Security Assistance.

VETERANS ADMINISTRATION

[38 CFR Part 8a]

VETERANS MORTGAGE LIFE INSURANCE

Lifetime Maximum Amount of Coverage

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration proposes to amend its Veterans Mortgage Life Insurance regulations relating to the lifetime maximum amount of insurance coverage. The Veterans Administration also proposes to make minor editorial changes in its Veterans Mortgage Life Insurance regulations. The amendments are intended to make the regulations conform to the amendment to the law authorizing Veterans Mortgage Life Insurance. The editorial changes are intended to reflect the agency's policy of using precise terms for gender in its regulations.

DATES: Comments must be received on or before July 14, 1977. It is proposed to make this amendment effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Ave., NW., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until July 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael A. Leonard, Veterans Administration Center (290B), P.O. Box 8079, Philadelphia, Pa. 19101, 215-951-5728.

SUPPLEMENTARY INFORMATION: The Administrator of Veterans' Affairs proposes regulatory changes to Part 8a of Title 38, Code of Federal Regulations, relating to the lifetime maximum amount of Veterans Mortgage Life Insurance authorized to each eligible veteran.

Section 8a.2, Title 38, Code of Federal Regulations, authorizes a lifetime maximum amount of insurance under section 806 of Title 38, United States Code, not to exceed $30,000. Section 806 provides the authority for issuance of Veterans Mortage Life Insurance. Public Law 94-433 (90 Stat. 1374), effective October 1, 1976, amended section 806, increasing the lifetime maximum amount of coverage authorized for each eligible veteran from $30,000 to $40,000. The purpose of these amendments to the Code of Federal Regulations is to bring Part 8a in line with the new amendment to section 806. To this end, the proposed amendments change all references to the lifetime maximum amount of insurance in § 8a.2 from $30,000 to $40,000. In addition, a new § 8a.2(c) has been added to provide that eligible veterans previously insured under Veterans Mortgage Life Insurance whose coverage would be increased by the new amendments may elect to retain the lesser amount of coverage in effect prior to October 1, 1976.

Section 8a.4 provides rules for coverage under Veterans Mortage Life Insurance. All references therein to the lifetime maximum amount of insurance authorized to each eligible veteran have also been changed from $30,000 to $40,000. In addition, editorial changes have been made to reflect agency policy of using precise terms denoting gender throughout Part 8a. This has rendered § 8a.1(h) unnecessary and it is, therefore, revoked.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until July 25, 1977. Any persons visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

INFLATION IMPACT: The Veterans Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Approved: June 3, 1977.

By direction of the Administrator,

RUFUS H. WILSON,
Deputy Administrator.

1. In § 8a.1, paragraphs (a), (c) and (e) are revised and paragraph (h) is revoked. The revised material reads as follows:

§ 8a.1 Definitions.

(a) The term "eligible veteran" means any veteran who is or has been granted assistance in securing a suitable housing unit under chapter 21 of title 38, United States Code, and who has not attained his or her 70th birthday.

* * * * *

(c) The term "housing unit" means a family dwelling or unit, together with the necessary land therefor, that has been or will be purchased, constructed, or remodeled with a grant to meet the needs of an eligible veteran and of his or her family, and is or will be owned and occupied by the eligible veteran as his or her home, or a family dwelling or unit, including the necessary land therefor, acquired by an eligible veteran to be used as his or her residence after selling or otherwise disposing of title to the housing unit for which his or her grant was made.

* * * * *

(e) The term "initial amount of insurance" means the amount of insurance corresponding in amount to the unpaid principal of a mortgage loan outstanding on a housing unit owned or to be acquired by an eligible veteran on August 11, 1971, or on the date of approval of his or her grant made under chapter 21 of title 38, United States Code, whichever is the later date.

* * * * *

(h) [Revoked]

2. In § 8.2, paragraphs (a), (b) (1), (4), (5), (6) and (8) are revised and paragraphs (b)(9) and (c) are added so that the revised and added material reads as follows:

§ 8a.2 Maximum amount of insurance.

(a) Effective October 1, 1976, each eligible veteran is authorized a lifetime maximum amount of insurance under section 806 of title 38, United States Code, not to exceed $40,000, to be used as needed for insurance on his or her life during periods he or she is obligated under a mortgage loan. Whenever insurance on the life of an eligible veteran is reduced because of a reduction of the principal of his or her mortgage loan, or in accordance with the amortization schedule of his or her mortgage loan, his or her lifetime maximum of $40,000 is permanently reduced by such an amount, except in the case of a reduction of the principal of the mortgage loan resulting from a sale of the property or a refinancing of the loan.

(b) The maximum amount of insurance in force on any life at one time shall not exceed the lesser of the following amounts:

(1) $40,000.

* * * * *

(4) Where the grant was approved prior to August 11, 1971, but had not been fully disbursed on that date, the amount of the unpaid principal of the mortgage loan outstanding on that date on a housing unit then owned and occupied by the eligible veteran, or on a housing unit then in the process of construction or remodeling for the eligible veteran, and such initial amount of insurance may be adjusted upward, subject to the maximum insurance available to the eligible veteran, or downward, depending upon the amount of the mortgage loans outstanding on the date of full disbursement of the grant, or on the date of the final settlement of the purchase, construction, or remodeling agreement, which ever date is the later date.

(5) Where the grant is approved on or after August 11, 1971, the amount of the unpaid principal of the mortgage loan outstanding on the date of approval of the grant on a housing unit then owned and occupied by the eligible veteran, or on a housing unit being or to be

constructed or remodeled for the eligible veteran, and such initial amount of insurance may be adjusted upward, subject to the maximum insurance available to the eligible veteran, or downward, depending upon the amount of the mortgage loans outstanding on the date of full disbursement of the grant, or on the date of final settlement of the purchase, construction, or remodeling agreement, whichever date is the later date.

(6) Where an eligible veteran ceases to own the housing unit purchased in part with a grant, or a subsequently acquired housing unit which was subject to a mortgage loan that resulted in his or her life being insured under Veterans Mortgage Life Insurance, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the amount of the unpaid principal outstanding on the mortgage loan on the newly acquired housing unit on the date insurance hereunder is placed in effect.

* * * * *

(8) Where the title to a housing unit is or will be vested in an eligible veteran and his or her spouse, the amount of insurance shall not exceed the principal amount of the outstanding mortgage loans. If title to an undivided interest in a housing unit is or will be vested in a person other than the spouse of an eligible veteran, the amount of Veterans Mortgage Life Insurance on his or her life shall be computed to be such part of the total of the unpaid principal of the loan outstanding on the housing unit as is proportionate to the undivided interest of the veteran in the entire property.

(9) All claims, arising out of the deaths of insured veterans occurring prior to October 1, 1976, shall be subject to the $30,000 lifetime maximum amount of insurance then in effect.

(c) Any eligible veteran who prior to October 1, 1976, was covered by $30,000 Veterans Mortgage Life Insurance and who on that date became eligible to have his or her coverage increased may elect to retain the lesser amount of coverage he or she had in effect prior to that date.

3. Section 8a.3 is revised to read as follows:

§ 8a3 Effective date.

(a) Where the grant was approved prior to August 11, 1971, Veterans Mortgage Life Insurance shall be effective August 11, 1971, if on that date, the eligible veteran was obligated under a mortgage loan, and any such eligible veteran is automatically insured, unless he or she elects in writing not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(b) Where the grant is approved on or after August 11, 1971, Veterans Mortgage Life Insurance shall be effective on the date of approval of the grant, if on that date the eligible veteran is obligated under a mortgage loan, and any such eligible veteran is automatically insured, unless he or she elects in writing not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(c) In any case in which a veteran would have been eligible for Veterans Mortgage Life Insurance on August 11, 1971, or on the date of approval of his or her grant, whichever date is the later date, but such insurance did not become effective because he or she was not obligated under a mortgage loan on that date, or because he or she elected in writing not to be insured, or failed to timely respond to a request for information on which his or her premium could be based, the insurance will be effective on a date agreed upon by the veteran and the Administrator, but only if the veteran files an application in writing with the Veterans Administration for such insurance, submits evidence that he or she meets the health requirements of the Administrator, together with information on which his or her premium can be based, and is or becomes obligated under a mortgage loan upon the date agreed upon as the effective date of his or her insurance.

(d) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date requested by the veteran and agreed to by the Administrator, but only if the eligible veteran files an application for such insurance, submits evidence that he or she meets the health requirements of the Administrator, furnishes information on which his or her premium can be based, and is or becomes obligated under a mortgage loan on the date the insurance is to become effective.

(e) In any case where an eligible veteran insured under Veterans Mortgage Life Insurance, refinances the mortgage loan which is the basis for such insurance on his or her life, any increase in the amount of insurance or any delay in the rate of reduction of insurance will be effective only if the eligible veteran files an application for insurance, submits evidence that he or she meets the health requirements of the Administrator, and furnishes information on which his or her premium can be based.

4. In § 8a.4, paragraphs (b), (c) and (d) are revised to read as follows:

§ 8a.4 Coverage.

* * * * *

(b) The $40,000 lifetime maximum amount of Veterans Mortgage Life Insurance available to an eligible veteran shall be permanently reduced, and the amount of such insurance in force on his or her life at any one time shall be reduced simultaneously (1) with the reduction in the principal of the mortgage loan, whether or not the mortgage loan is amortized, and (2) in addition, if the mortgage loan is amortized, according to the schedule for the reduction of the principal of the mortgage loan whether or not the scheduled payments are timely made.

(c) If the amount of the mortgage loan exceeds $40,000, or the reduced maximum amount of insurance available to an eligible veteran, whichever amount is the lesser, the amount of insurance in force on the life of the veteran shall remain at a constant level until the principal amount of the mortgage loan which is basis for establishing the amount of insurance is reduced to $40,000, or to the amount of the reduced maximum amount of insurance available to the veteran, at which time the amount of insurance in force on his or her life shall be reduced in accordance with the schedule for the reduction of the principal of the mortgage loan, and whether or not the scheduled payments are timely made.

(d) Subject to the $40,000 lifetime maximum amount of insurance, and to the reduced maximum amount of insurance available to the eligible veteran, he or she is entlited to be insured under Veterans Mortgage Life Insurance or to apply for such insurance as often as he or she becomes obligated under a mortgage loan or a refinanced mortgage loan on a housing unit or a successor housing unit owned and occupied by the eligible veteran. Where a veteran who is not automatically insured under Veterans Mortgage Life Insurance applies for such insurance, he or she shall be required to meet the health standards and other conditions established by the Administrator for such insureds.

[FR Doc.77-16854 Filed 6-13-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 746-6]

COMMONWEALTH OF PENNSYLVANIA

Proposed Revision to Air Quality Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On May 20, 1977, the Commonwealth of Pennsylvania submitted a proposed amendment to the Pennsylvania State Implementation Plan (SIP), under the Clean Air Act, and has requested that this amendment be reviewed and approved as a revision to the Pennsylvania SIP. The proposed amendment provides for the reduction of hydrocarbon emissions through a program of substitution of emulsion-based asphalts for "cutback material" (or nonmethane hydrocarbon based asphalts). Approval of the proposed amendment will permit the construction of the proposed Volkswagen of America, Inc., automobile plant in New Stanton, Pennsylvania.

DATES: Comments must be received on or before July 5, 1977.

ADDRESS: Comments should be sent to Mr. Howard Heim, Chief, Air Programs

Branch, Air and Hazardous Material Division, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

Copies of the proposed revision of the Pennsylvania SIP and accompanying support documentation are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: Mr. Glenn Hanson.

Pennsylvania Bureau of Air Quality and Noise Control, Post Office Box 2063, Harrisburg, Pennsylvania 17120. ATTN: Mr. Gary Triplett.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Glenn Hanson, Regional Air New Source Coordinator, 215-597-8170.

SUPPLEMENTARY INFORMATION: The purpose of this proposed amendment to the Pennsylvania SIP, pursuant to the EPA December 21, 1976 Interpretative Ruling (Ruling) (41FR55523), is to offset non-methane hydrocarbon emissions resulting from the construction and operation of the proposed Volkswagen of America, Inc., automobile plant in New Stanton, Pennsylvania. As required by the Ruling, a new major stationary source may construct in an area currently exceeding any National Ambient Air Quality Standard(s) (NAAQS) only under certain conditions. One condition is the following: If there are achieved in that area emission reductions that more than offset air pollutants which cause or contribute to a violation of any NAAQS, then construction of the new source can be permitted. The geographical area within which the Volkswagen of America, Inc. automobile facility is proposed to be located is exceeding the NAAQS for photochemical oxidants. Non-methane hydrocarbons have been determined to be a major contributor to the formation of photochemical oxidant ambient air quality levels. Therefore, non-methane hydrocarbon emission offsets are required to accommodate the operation of the proposed Volkswagen facility.

The proposed revision to the Pennsylvania SIP will result in a decrease of one thousand and twenty-five (1025) tons per year of non-methane hydrocarbons within a seventeen (17) county area. Included in this area are Mercer, Venango, Lawrence, Clearfield, Somerset, Armstrong, Butler, Clarion, Indiana, Jefferson, Allegheny, Beaver, Fayette, Green, Washington, and Westmoreland countries.

At no time will non-methane hydrocarbon emissions resulting from the construction and operation of the proposed Volkswagen automobile plant exceed eight hundred and ninety-eight (898) tons of non-methane hydrocarbons per year. This level of control of non-methane hydrocarbon emissions from the operation of this source is required as a permit condition enforceable by the State and federal government. If, in the future, it is requested that construction and operation of this facility be such as to result in increases of non-methane hydrocarbons, above the 898 tons per year set forth in this proposed revision, additional reductions in non-methane hydrocarbons in the aforementioned geographical area will have to be proposed as revisions to the Pennsylvania SIP and approved by EPA.

The public is invited to submit comments on whether the amendments submitted by the Commonwealth of Pennsylvania should be approved or disapproved as a revision of the Pennsylvania State Implementation Plan. All comments received on or before July 5, 1977 will be considered.

The Administrator's decision to approve or disapprove this proposed SIP revision will be based on whether the amendment submitted by the Commonwealth of Pennsylvania meets requirements of Section 110 of the Clean Air Act, the EPA December 21, 1976 Interpretative Ruling, and 40 CFR Part 51, "Requirements for Preparation, Adoption and Submittal of Implementation Plans." EPA's preliminary review indicates that it may be necessary for EPA to promulgate supplementary provisions to ensure that the hydrocarbon reduction program will be legally enforceable by the State and EPA, and to ensure, that adequate monitoring and reporting will be implemented.

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

Dated: June 7, 1977.

CHRISTOPHER K. SEGLEM,
Acting Regional Administrator.

[FR Doc.77-16775 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 743-7]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Del Norte County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to the Del Norte County Air Pollution Control District's Rules and Regulations which were submitted to EPA by the California Air Resources Board for inclusion in the California State Implementation Plan. These revisions were submitted on July 25, 1973; October 23, 1974; April 10, 1975; July 22, 1975; and November 10, 1976. Since the November 10, 1976 submittal represents the most recent set of rules and regulations for this District, it will be addressed in this notice. Regulations concerning New Source Review are not being considered in this notice, and will be the topic of a separate FEDERAL REGISTER notice. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air & Hazardous Materials Division, Environmental Protection Agency, Attn: David R. Souten, 100 California Street, San Francisco, CA 94111. (415-556-7288).

SUPPLEMENTARY INFORMATION: The November 10, 1976 submittal contained revisions to the following rules:

REGULATION 1—AIR QUALITY CONTROL RULES

CHAPTER I—GENERAL PROVISIONS

Rule 100—Title
Rule 110—Purpose
Rule 120—Administration
Rule 130—Definitions
Rule 140—Emergency Conditions
Rule 150—Public Records
Rule 160—Ambient Air Quality Standards
Rule 190—Validity

CHAPTER III—FEES

Rule 300—Permit Fees
Rule 310—Permit Fee Schedules
Rule 320—Hearing Board Fees
Rule 340—Technical Report Charges

CHAPTER IV—PROHIBITIONS

Rule 400—General Limitations
Rule 410—Visible Emissions
Rule 420—Particulate Matter
Rule 430—Fugitive Dust Emissions
Rule 440—Sulfur Oxide Emissions
Rule 450—Sulfide Emission Standards
Rule 460—Organic Gas Emissions
Rule 470—Reduction of Animal Matter
Rule 480—Orchard, Vineyard and Citrus Grove Heaters
Rule 482—Petroleum Loading and Storage
Rule 490—Federal New Source Performance Standards
Rule 492—National Emission Standards for Hazardous Air Pollutants

CHAPTER V—ENFORCEMENT & PENALTY ACTIONS

Rule 500—Enforcement
Rule 510—Orders for Abatement
Rule 520—Civil Penalties
Rule 540—Equipment Breakdown

CHAPTER VI—HEARING BOARD & VARIANCE PROCEDURES

Rule 600—Authorization
Rule 610—Petition Procedures
Rule 620—Hearing Procedures
Rule 630—Decisions
Rule 640—Record of Proceedings
Rule 650—Appeal of Decision

REGULATION 2—OPEN BURNING PROCEDURES

Open Burning Procedures
Article I—Scope and Policy
Article II—Definitions
Article III—Use Classifications
Article IV—Notification of Burning Conditions

Article V—Burning Permits and Reports
Article VI—Burning Preparation and Restrictions
Article VII—Enforcement

REGULATION 3—FEDERAL NEW SOURCE PERFORMANCE STANDARDS

Definitions
NSPS Rule 1—General Provisions
NSPS Rule 2—Fossil Fuel-Fired Steam Generators
NSPS Rule 3—Incinerators
NSPS Rule 4—Portland Cement Plants
NSPS Rule 5—Nitric Acid Plants
NSPS Rule 6—Sulfuric Acid Plants
NSPS Rule 7—Asphalt Concrete Plants
NSPS Rule 8—Petroleum Refineries
NSPS Rule 9—Storage Vessels for Petroleum Liquids
NSPS Rule 10—Secondary Lead Smelters
NSPS Rule 11—Secondary Brass and Bronze Ingot Production Plants
NSPS Rule 12—Iron and Steel Plants
NSPS Rule 13—Sewage Treatment Plants
NSPS Rule 14—Phosphate Fertilizer Industry
NSPS Rule 15—Steel Plant—Electric Arc Furnaces

REGULATION 4—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

NESHAPS Rule 1—NESHAPS General Provisions
NESHAPS Rule 2—Emission Standard for Asbestos
NESHAPS Rule 3—Emission Standard for Beryllium
NESHAPS Rule 4—Emission Standard for Beryllium Rocket Motor Firing
NESHAPS Rule 5—Emission Standard for Mercury

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before July 14, 1977. Comments received will be available for public inspection at the Region IX Office and the EPA Public Information Referenue Unit.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Del Norte County Air Pollution Control District, Courthouse, Crescent City CA 95531.
California Air Resources Board, 1709, 11th Street, Sacramento CA 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco CA 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

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

Dated: April 22, 1977.

R. L. O'CONNELL,
Acting Regional Administrator.

[FR Doc.77-16813 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 743-5]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Humboldt County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to the Humboldt County Air Pollution Control District's Rules and Regulations which were submitted to EPA by the California Air Resources Board for inclusion in the California State Implementation Plan. These revisions were submitted on December 13, 1972; July 25, 1973; January 22, 1974; July 19, 1974; October 23, 1974; April 10, 1975; July 22, 1975; and November 10, 1976. Since the November 10, 1976 submittal represents the most recent set of rules and regulations for this District, it will be addressed in this notice. Regulations concerning New Source Review are not being considered in this notice, and will be the topic of a separate FEDERAL REGISTER notice. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section EPA, Region IX, 100 California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air & Hazardous Materials Division, Environmental Protection Agency, Attn: David R. Souten, 100 California Street, San Francisco, CA 94111 (415-556-7288).

SUPPLEMENTARY INFORMATION: The November 10, 1976 submittal contained revisions to the following rules:

REGULATION 1—AIR QUALITY CONTROL RULES

CHAPTER I—GENERAL PROVISIONS

Rule 100—Title.
Rule 110—Purpose.
Rule 120—Administration.
Rule 130—Definitions.
Rule 140—Emergency Conditions.
Rule 150—Public Records.
Rule 160—Ambient Air Quality Standards.
Rule 190—Validity.

CHAPTER III—FEES

Rule 300—Permit Fees.
Rule 310—Permit Fee Schedules.
Rule 320—Hearing Board Fees.
Rule 340—Technical Report Charges.

CHAPTER IV—PROHIBITIONS

Rule 400—General Limitations.
Rule 410—Visible Emissions.
Rule 420—Particulate Matter.
Rule 430—Fugitive Dust Emissions.
Rule 440—Sulfur Oxide Emissions.
Rule 450—Sulfide Emission Standards.
Rule 460—Organic Gas Emissions.
Rule 470—Reduction of Animal Matter.
Rule 480—Orchard, Vineyard and Citrus Grove Heaters.
Rule 482—Petroleum Loading and Storage.
Rule 490—Federal New Source Performance Standards.
Rule 492—National Emission Standards for Hazardous Air Pollutants.

CHAPTER V—ENFORCEMENT & PENALTY ACTIONS

Rule 500—Enforcement.
Rule 510—Orders for Abatement.
Rule 520—Civil Penalties.
Rule 540—Equipment Breakdown.

CHAPTER VI—HEARING BOARD & VARIANCE PROCEDURES

Rule 600—Authorization.
Rule 610—Petition Procedures.
Rule 620—Hearing Procedures.
Rule 630—Decisions.
Rule 640—Record of Proceedings.
Rule 650—Appeal of Decision.

REGULATION 2—OPEN BURNING PROCEDURES

Open Burning Procedures.
Article I—Scope and Policy.
Article II—Definitions.
Article III—Use Classifications.
Article IV—Notification of Burning Conditions.
Article V—Burning Permits and Reports.
Article VI—Burning Preparation and Restrictions.
Article VII—Enforcement.

REGULATION 3—FEDERAL NEW SOURCE PERFORMANCE STANDARDS

Definitions.
NSPS Rule 1—General Provisions.
NSPS Rule 2—Fossil Fuel-Fired Steam Generators.
NSPS Rule 3—Incinerators.
NSPS Rule 4—Portland Cement Plants.
NSPS Rule 5—Nitric Acid Plants.
NSPS Rule 6—Sulfuric Acid Plants.
NSPS Rule 7—Asphalt Concrete Plants.
NSPS Rule 8—Petroleum Refineries.
NSPS Rule 9—Storage Vessels for Petroleum Liquids.
NSPS Rule 10—Secondary Lead Smelters.
NSPS Rule 11—Secondary Brass and Bronze Ingot Production Plants.
NSPS Rule 12—Iron and Steel Plants.
NSPS Rule 13—Sewage Treatment Plants.
NSPS Rule 14—Phosphate fertilizer Industry.
NSPS Rule 15—Steel Plant—Electric Arc Furnaces.

REGULATION 4 — NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

NESHAPS Rule 1—NESHAPS General Provisions.
NESHAPS Rule 2—Emission Standard for Asbestos.
NESHAPS Rule 3—Emission Standard for Beryllium.
NESHAPS Rule 4—Emission Standard for Beryllium Rocket Motor Firing.
NESHAPS Rule 5—Emission Standard for Mercury.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP re-

vision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before July 14, 1977 will be considered. Comments received will be available for public inspection at the Region IX office and the EPA Public Information Reference Unit.

Copies of the proposed revisions are available for public inspection during normal business hours at the following locations:

Humboldt County Air Pollution Control District, 5600 South Broadway, Eureka, CA 95501.
California Air Resources Board, 1709–11th Street, Sacramento, CA 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, CA 94111.
Public Information Reference Unit, Room 2922 (EPA Library); 401 M Street, SW., Washington, D.C. 20460.

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

Dated: April 25, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-16814 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 743-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Mendocino County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to the Mendocino County Air Pollution Control District's Rules and Regulations which were submitted to EPA by the California Air Resources Board for inclusion in the California State Implementation Plan. These revisions were submitted on December 13, 1972; July 25, 1973; January 22, 1974; July 19, 1974; January 10, 1975; July 22, 1975; February 10, 1976; and November 10, 1976. Since the November 10, 1976 submittal represents the most recent set of rules and regulations for this District, it will be addressed in this notice. Regulations concerning New Source Review are not being considered in this Notice, and will be the topic of a separate FEDERAL REGISTER notice. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator. Attn: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco CA 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air & Hazardous Materials Division, Environmental Protection Agency, Attn: David R. Souten, 100 California Street, San Francisco CA 94111 (415-556-7288).

SUPPLEMENTARY INFORMATION: The November 10, 1976 submittal contained revisions to the following rules:

REGULATION 1—AIR QUALITY CONTROL RULES

CHAPTER I—GENERAL PROVISIONS

Rule 100—Title.
Rule 110—Purpose.
Rule 120—Administration.
Rule 130—Definitions.
Rule 140—Emergency Conditions.
Rule 150—Public Records.
Rule 160—Ambient Air Quality Standards.
Rule 190—Validity.

CHAPTER III—FEES

Rule 300—Permit Fees.
Rule 310—Permit Fee Schedules.
Rule 320—Hearing Board Fees.
Rule 340—Technical Report Charges.

CHAPTER IV—PROHIBITIONS

Rule 400—General Limitations.
Rule 410—Visible Emissions.
Rule 420—Particulate Matter.
Rule 430—Fugitive Dust Emissions.
Rule 440—Sulfur Oxide Emissions.
Rule 450—Sulfide Emission Standards.
Rule 460—Organic Gas Emissions.
Rule 470—Reduction of Animal Matter.
Rule 480—Orcharde, Vineyard and Citrus Grove Heaters.
Rule 482—Petroleum Loading and Storage.
Rule 490—Federal New Source Performance Standards.
Rule 492—National Emission tSandards for Hazardous Air Pollutants.

CHAPTER V—ENFORCEMENT & PENALTY ACTIONS

Rule 500—Enforcement.
Rule 510—Orders for Abatement.
Rule 520—Civil Penalties.
Rule 540—Equipment Breakdown.

CHAPTER VI—HEARING BOARD & VARIANCE PROCEDURES

Rule 600—Authorization.
Rule 610—Petition Procedures.
Rule 620—Hearing Procedures.
Rule 630—Decisions.
Rule 640—Record of Proceedings.
Rule 650—Appeal of Decision.

REGULATION 2—OPEN BURNING PROCEDURES

Open Burning Procedures.
Article I—Scope and Policy.
Article II—Definitions.
Article III—Use Classifications.
Article IV—Notification of Burning Conditions.
Article V—Burning Permits and Reports.
Article VI—Burning Preparation and Restrictions.
Article VII—Enforcement.

REGULATION 3—FEDERAL NEW SOURCE PERFORMANCE STANDARDS

Definitions.
NSPS Rule 1—General Provisions.
NSPS Rule 2—Fossil Fuel-Fired Steam Generators.
NSPS Rule 3—Incinerators.
NSPS Rule—4—Portland Cement Plants.
NSPS Rule 5—Nitric Acid Plants.
NSPS Rule 6—Sulfuric Acid Plants.
NSPS Rule 7—Asphalt Concrete Plants.
NSPS Rule 8—Petroleum Refineries.
NSPS Rule 9—Storage Vessels for Petroleum Liquids.
NSPS Rule 10—Secondary Lead Smelters.
NSPS Rule 11—Secondary Brass and Bronze Ingot Production Plants.
NSPS Rule 12—Iron and Steel Plants.
NSPS Rule 13—Sewage Treatment Plants.
NSPS Rule 14—Phosphate Fertilizer Industry.
NSPS Rule 15—Steel Plant—Electric Arc Furnaces.

REGULATION 4—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

NESHAPS Rule 1—NESHAPS General Provisions.
NESHAPS Rule 2—Emission Standard for Asbestos.
NESHAPS Rule 3—Emission Standard for Beryllium.
NESHAPS Rule 4—Emission Standard for Beryllium Rocket Motor Firing.
NESHAPS Rule 5—Emission Standard for Mercury.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before July 14, 1977 will be considered. Comments received will be available for public inspection at the Region IX Office and the EPA Public Information Reference Unit.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Mendocino County Air Pollution Control District, Courthouse, 890 North Bush Street, Ukiah CA 95482.
California Air Resources Board, 1709 11th Street, Sacramento CA 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco CA 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

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

Dated: April 22, 1977.

R. L. O'CONNELL,
Acting Regional Director.

[FR Doc.77-16815 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 744-1]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Merced County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to the Merced County Air Pollution Control District's Rules and Regulations which were submitted to EPA by the California Air Resources Board for inclusion in the California State Implementation Plan. These revisions were submitted on July 25, 1973; July 19, 1974; January 10, 1975; April 10, 1976, and August 2, 1976. Since the August 2, 1976 submittal represents the most recent set of rules and regulations for this District, it will be addressed in this notice. Regulations concerning new source review, emergency episode, and gasoline vapor recovery are not being considered in this notice, and will be the topic of a separate FEDERAL REGISTER notice. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator. Attn: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco CA 94111.

Availability of Documents: Copies of the proposed revision are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations:

Merced County Air Pollution Control District, 210 E. 13th Street, Merced, CA 95340.
California Air Resources Board, 1709 11th Street, Sacramento CA 95814.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

David R. Souten, Chief, California SIP Section (415–556–7288).

SUPPLEMENTARY INFORMATION: The August 2, 1976 submittal contained revisions to the following rules:

REGULATION I—GENERAL PROVISIONS

Rule 101 Title
Rule 102 Definitions.
Rule 103 Confidential Information.
Rule 103.1 Inspection of Public Records.
Rule 104 Enforcement.
Rule 105 Order of Abatement.
Rule 106 Land Use.
Rule 107 Inspections.
Rule 108 Source Monitoring.
Rule 108.1 Source Sampling.
Rule 109 Equipment Shutdown, Startup, and Breakdown.
Rule 110 Circumvention.
Rule 111 Separation and Combination.
Rule 112 Penalty.
Rule 113 Arrests and Notices to Appear.
Rule 114 Severability.
Rule 115 Applicability of Emission Limits.

REGULATION III—FEES

Rule 301 Permit Fee.
Rule 302 Permit Fee Schedules.
Rule 303 Analysis Fees.
Rule 304 Technical Reports—Charge for.
Rule 305 Hearing Board Fees.

REGULATION IV—PROHIBITIONS

Rule 401 Visible Emissions.
Rule 402 Exceptions.
Rule 403 Wet Plumes.
Rule 404 Particulate Matter Concentration.
Rule 405 Particulate Matter — Emission Rate.
Rule 406 Process Weight Chart.
Rule 407 Sulfur Compounds.
Rule 407.1 Disposal of Solid or Liquid Waste.
Rule 408 Fuel Burning Equipment.
Rule 408.1 Fuel Burning Equipment—Oxides of Nitrogen.
Rule 408.2 Fuel Burning Equipment—Combustion Contaminants.
Rule 409 Organic Solvents.
Rule 409.1 Architectural Coatings.
Rule 410 Storage of Petroleum Products.
Rule 412 Organic Liquid Loading.
Rule 413 Effluent Oil Water Separators.
Rule 414 Reduction of Animal Matter.
Rule 415 Open Burning.
Rule 416 Exceptions.
Rule 416.1 Agricultural Burning.
Rule 417 Incinerator Burning.
Rule 418 Nuisance.
Rule 419 Exception.
Rule 420 Orchard Heaters.
Rule 421 Burning Reports.
Rule 422 New Source Performance Standards.
Rule 423 Emission Standards for Hazardous Air Pollutants.

REGULATION V—PROCEDURE BEFORE THE HEARING BOARD

Rule 501 Applicable Articles of the Health and Safety Code.
Rule 502 General.
Rule 503 Filing Petitions.
Rule 504 Contents of Petitions.
Rule 505 Petitions for Variances.
Rule 506 Appeal from Denial.
Rule 507 Failure to Comply with Rules.
Rule 508 Answers.
Rule 509 Dismissal of Petition.
Rule 510 Place of Hearing.
Rule 511 Notice of Hearing.
Rule 512 Evidence.
Rule 513 Preliminary Matters.
Rule 514 Official Notice.
Rule 515 Continuances.
Rule 516 Decision.
Rule 517 Effective Date of Decision.
Rule 518 Lack of Permit.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX office.

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

Dated: May 3, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-16812 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 743-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Northern Sonoma County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to th Northern Sonoma County Air Pollution Control District's Rules and Regulations which were submitted to EPA by the California Air Resources Board for inclusion in the California State Implementation Plan. These revisions were submitted on July 25, 1973; January 22, 1974; January 10, 1975; November 3, 1975; August 2, 1976; and November 10, 1976. Since the August 2, 1976 and November 10, 1976 submittals represent the most recent set of rules and regulations for this District, they will be addressed in this notice. Regulations concerning New Source Review are not being considered in this notice, and will be the topic of a separate FEDERAL REGISTER notice. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco CA 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air & Hazardous Materials Division, Environmental Protection Agency, Attn: David R. Souten, 100 California Street, San Francisco, CA 94111. (415–556–7288).

SUPPLEMENTARY INFORMATION: The August 2, 1976 submittal included the following regulations which were retained by reference in the November 10, 1976 submittal:

Rule 56.1—Geothermal Operations—Power Plant Emissions
Rule 56.2—Geothermal Operations—Prepower Emissions
Figure 56.1—Sonoma County Geothermal Zone I

The November 10, 1976 submittal contained revisions to the following rules:

REGULATION 1—AIR QUALITY CONTROL RULES

CHAPTER I—GENERAL PROVISIONS

Rule 100—Title
Rule 110—Purpose
Rule 120—Administration
Rule 130—Definitions
Rule 140—Emergency Conditions
Rule 150—Public Records
Rule 160—Ambient Air Quality Standards
Rule 190—Validity

CHAPTER III—FEES

Rule 300—Permit Fees
Rule 310—Permit Fee Schedules
Rule 320—Hearing Board Fees
Rule 340—Technical Report Charges

CHAPTER IV—PROHIBITIONS

Rule 400—General Limitations
Rule 410—Visible Emissions

Rule 420—Particulate Matter
Rule 430—Fugitive Dust Emissions
Rule 440—Sulfur Oxide Emissions
Rule 450—Sulfide Emission Standards
Rule 460—Organic Gas Emissions
Rule 470—Reduction of Animal Matter
Rule 480—Orchard, Vineyard and Citrus Grove Heaters
Rule 482—Petroleum Loading and Storage
Rule 490—Federal New Source Performance Standards
Rule 492—National Emission Standards for Hazardous Air Pollutants

CHAPTER V—ENFORCEMENT & PENALTY ACTIONS

Rule 500—Enforcement
Rule 510—Orders for Abatement
Rule 520—Civil Penalties
Rule 540—Equipment Breakdown

CHAPTER VI—HEARING BOARD & VARIANCE PROCEDURES

Rule 600—Authorization
Rule 610—Petition Procedures
Rule 620—Hearing Procedures
Rule 630—Decisions
Rule 640—Record of Proceedings
Rule 650—Appeal of Decision

REGULATION 2—OPEN BURNING PROCEDURES

Open Burning Procedures
Article I—Scope and Policy
Article II—Definitions
Article III—Use Classifications
Article IV—Notification of Burning Conditions
Article V—Burning Permits and Reports
Article VI—Burning Preparation and Restrictions
Article VII—Enforcement

REGULATION 3—FEDERAL NEW SOURCE PERFORMANCE STANDARDS

Definitions
NSPS Rule 1—General Provisions
NSPS Rule 2—Fossil Fuel-Fired Steam Generators
NSPS Rule 3—Incinerators
NSPS Rule 4—Portland Cement Plants
NSPS Rule 5—Nitric Acid Plants
NSPS Rule 6—Sulfuric Acid Plants
NSPS Rule 7—Asphalt Concrete Plants
NSPS Rule 8—Petroleum Refineries
NSPS Rule 9—Storage Vessels for Petroleum Liquids
NSPS Rule 10—Secondary Lead Smelters
NSPS Rule 11—Secondary Brass and Bronze Ingot Production Plants
NSPS Rule 12—Iron and Steel Plants
NSPS Rule 13—Sewage Treatment Plants
NSPS Rule 14—Phosphate Fertilizer Industry
NSPS Rule 15—Steel Plant—Electric Arc Furnaces

REGULATION 4—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

NESHAPS Rule 1—NESHAPS General Provision
NESHAPS Rule 2—Emission Standard for Asbestos
NESHAPS Rule 3—Emission Standard for Beryllium Rocket Motor Firing
NESHAPS Rule 5—Emission Standard for Mercury

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participante by submitting written comments to the Region IX Office. Relevant comments received on or before July 14, 1977 will be considered. Comments received will be aavilable for public inspection at the Region IX Office and the EPA Public Information Reference Unit.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Northern Sonoma County Air Pollution Control District, 421 March Avenue, Suite C, Healdsburg, CA 95448.
California Air Resources Board, 1709 11th Street, Sacramento, CA 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, CA 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

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

Dated: May 5, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-16811 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 743-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Trinity County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to the Trinity County Air Pollution Control District's Rules and Regulations which were submitted to EPA by the California Air Resources Board for inclusion in the California State Implementation Plan. These revisions were submitted on July 25, 1973; October 23, 1974; July 22, 1975; and November 10, 1976. Since the November 10, 1976 submittal represents the most recent set of rules and regulations for this District, it will be addressed in this notice. Regulations concerning New Source Review are not being considered in this notice, and will be the topic of a separate FEDERAL REGISTER notice. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air & Hazardous Materials Division, Environmental Protection Agency, Attn: David R. Souten, 100 California Street, San Francisco, CA 94111. (415-556-7288).

SUPPLEMENTARY INFORMATION: The November 10, 1976 submittal contained revisions to the following rules:

REGULATION I—AIR QUALITY CONTROL RULES

CHAPTER I—GENERAL PROVISIONS

Rule 100—Title.
Rule 110—Purpose.
Rule 120—Administration.
Rule 130—Definitions.
Rule 140—Emergency Conditions.
Rule 150—Public Records.
Rule 160—Ambient Air Quality Standards.
Rule 190—Validity.

CHAPTER III—FEES

Rule 300—Permit Fees.
Rule 310—Permit Fee Schedules.
Rule 320—Hearing Board Fees.
Rule 340—Technical Report Charges.

CHAPTER IV—PROHIBITIONS

Rule 400—General Limitations.
Rule 410—Visible Emissions.
Rule 420—Particulate Matter.
Rule 430—Fugitive Dust Emissions.
Rule 440—Sulfur Oxide Emissions.
Rule 450—Sulfide Emission Standards.
Rule 460—Organic Gas Emissions.
Rule 470—Reduction of Animal Matter.
Rule 480—Orchard, Vineyard and Citrus Grove Heaters.
Rule 482—Petroleum Loading and Storage.
Rule 490—Federal New Source Performance Standards.
Rule 492—National Emission Standards for Hazardous Air Pollutants.

CHAPTER V—ENFORCEMENT & PENALTY ACTIONS

Rule 500—Enforcement.
Rule 510—Orders for Abatement.
Rule 520—Civil Penalties.
Rule 540—Equipment Breakdown.

CHAPTER VI—HEARING BOARD & VARIANCE PROCEDURES

Rule 600—Authorization.
Rule 610—Petition Procedures.
Rule 620—Hearing Procedures.
Rule 630—Decisions.
Rule 640—Record of Proceedings.
Rule 650—Appeal of Decision.

REGULATION 2—OPEN BURNING PROCEDURES

Open Burning Procedures.
Article I—Scope and Policy.
Article II—Definitions.
Article III—Use Classifications.
Article IV—Notification of Burning Conditions.
Article V—Burning Permits and Reports.
Article VI—Burning Preparation and Restrictions.
Article VII—Enforcement.

REGULATION 3—FEDERAL NEW SOURCE PERFORMANCE STANDARDS

Definitions
NSPS Rule 1—General Provisions.
NSPS Rule 2—Fossil Fuel-Fired Steam Generators.
NSPS Rule 3—Incinerators.
NSPS Rule 4—Portland Cement Plants.
NSPS Rule 5—Nitric Acid Plants.
NSPS Rule 6—Sulfuric Acid Plants.
NSPS Rule 7—Asphalt Concrete Plants.
NSPS Rule 8—Petroleum Refineries.
NSPS Rule 9—Storage Vessels for Petroleum Liquids.
NSPS Rule 10—Secondary Lead Smelters.
NSPS Rule 11—Secondary Brass and Bronze Ingot Production Plants.
NSPS Rule 12—Iron and Steel Plants.
NSPS Rule 13—Sewage Treatment Plants.
NSPS Rule 14—Phosphate Fertilizer Industry.
NSPS Rule 15—Steel Plant—Electric Arc Furnaces.

REGULATION 4—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

NESHAPS Rule 1—NESHAPS General Provisions
NESHAPS Rule 2—Emission Standard for Asbestos
NESHAPS Rule 3—Emission Standard for Beryllium
NESHAPS Rule 4—Emission Standard for Beryllium Rocket Motor Firing
NESHAPS Rule 5—Emission Standard for Mercury

Under section 110 of the Clean Air Act as amended, and 40 CFR 51, the Administrator is required to approve or disapprove the regulations as an SIP revision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before July 14, 1977 will be considered. Comments received will be available for public inspection at the Region IX Office and the EPA Public Information Reference Unit.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Trinity County Air Pollution Control District, 400 Barbara Avenue, Weaverville, CA 96093.
California Air Resources Board, 1709 11th Street, Sacramento, CA 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, CA 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street SW., Washington, D.C. 20460.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 1957c-5).)

Dated: May 5, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-16816 Filed 6-13-77;8:45 am]

[40 CFR Part 52]

[FRL 744-2]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to Tulare County Air Pollution Control Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: It is the purpose of this notice to acknowledge receipt of and invite public comments on revisions to the Tulare County Air Pollution Control District Rules and Regulations which were submitted to EPA by the State of California for inclusion in the California State Implementation Plan. These revisions were received on November 10, 1976. Regulations concerning Emergency Episodes, New Source Review, and Stack Monitoring are not being considered in this notice, and will be the topic of separate FEDERAL REGISTER notices. The EPA solicits comments regarding the desirability of approving or disapproving the rules and regulations being considered, especially as to their consistency with the Clean Air Act.

DATE: Comments may be submitted on or before July 14, 1977.

ADDRESS: Send comments to: Regional Administrator; Attn: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section, EPA, Region IX, 100 California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Attn: David Souten, San Francisco, CA 94111, 415-556-7288.

SUPPLEMENTARY INFORMATION: The November 10, 1976 submittal contained revisions to the following rules:

Sec.	
101	Title.
102	Definitions.
103	Confidential information.
103.1	Inspection of public records.
104	Enforcement.
105	Order of abatement.
106	Land use.
107	Inspections.
108	Source monitoring.
108.1	Source sampling.
109	Penalty.
110	Arrests and notices to appear.
111	Equipment shutdown, startup and breakdown.
112	Circumvention.
113	Separation and combination.
114	Severability.
115	Applicability of emission limits.
303	Analysis fes.
304	Technical reports, charge for.
305	Hearing board fees.
401	Visible emissions.
402	Exceptions.
403	Wet plumes.
404	Particulate matter.
405	Particulate emission rate, process weight.
406	Process weight, Portland cement kilns.
407	Sulfur compounds.
407.1	Disposal of solid or liquid waste.
407.2	Fuel burning equipment, combustion contaminants.
407.3	Scavenger plants.
408	Fuel burning equipment.
409	Fuel burning equipment, oxides of nitrogen.
410	Organic solvents.
410.1	Architectural coatings.
410.2	Disposal and evaporation of solvents.
411	Storage of petroleum products.
417.1	Agricultural burning.
420	Exception.
421	Orchard heaters.
422	New source performance standards.
423	Emission standards for hazardous air pollutants.
501	Applicable provisions of the health and safety code.
502	General.
503	Filing petitions.
504	Contents of petitions.
505	Petitions for variances.
507	Failure to comply with rules.
508	Answers.
509	Dismissal of petition.
510	Place of hearing.
511	Notice of hearing.
512	Evidence.
513	Preliminary matters.
514	Official notice.
515	Continuances.
516	Decision.
517	Effective date of decision.
518	Joinder of appeal with petition for a variance.
603	Episode criteria levels.
604	Episode stages.

Pursuant to section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as an SIP revision. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Relevant comments received on or before July 14, 1977 will be considered. Comments received will be available for public inspection at the Region IX office and the EPA Public Information Reference Unit.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations:

Tulare County Air Pollution Control District, Public Health Center Building, County Civic Center, Visalia, CA 93277.
California Air Resources Board, 1709 11th Street, Sacramento, CA 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, CA 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington D.C. 20460.

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

Dated: May 11, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-16810 Filed 6-13-77;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 536]

[General Order 13; Docket No. 75-28]

SUBMISSION OF REVENUE AND COST DATA, CONCERNING GENERAL RATE INCREASES AND CERTAIN SURCHARGES FILED BY COMMON CARRIERS, CONFERENCES, AND MEMBER CARRIERS OF RATE AGREEMENTS

Withdrawal of Proposed Rule

AGENCY: Federal Maritime Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: This notice withdraws proposed rule requiring common carriers by water, conferences of such carriers and member carriers of such conferences operating in the foreign commerce of the United States to submit revenue and cost data to the Federal Maritime Commission in connection with general rate increases and certain surcharges filed with the Commission by such carriers or conferences. The Commission has determined to withdraw this rule at this time. The effect of such action is to refrain from imposing the proposed filing requirements.

EFFECTIVE DATE: June 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Acting Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: The rule proposed in this proceeding was published for public procedure on August 11, 1975 (40 FR 33688). As proposed, the rule required submission to this Commission of certain cost and revenue data by common carriers by water in the foreign commerce of the United States under the provisions of section 18(b)(5) of the Shipping Act, 1916 (46) U.S.C. 817, as amended). In response to the proposed rule, over 80 parties filed comments. Commission Hearing Counsel filed their Reply to those Comments, and Answers were thereafter received.

Opposition to the proposed rule by ocean carriers and conferences of carriers was premised largely upon alleged inadequacy of statutory authorization in the Commission to permit it to exercise general routine surveillance over the cost bases of rates in the foreign commerce of the United States. Shippers generally endorsed the proposed rule.

Upon consideration of the comments filed and reexamination of the rule proposed, its purpose and objectives, the Commission has decided to withdraw such rule at this time and discontinue the proceeding.

Therefore, *it is ordered*, That this proceeding be, and hereby is, discontinued.

And, *it is further ordered*, That the rule proposed on August 11, 1975 and published on that date in the FEDERAL REGISTER (40 FR 33688) be, and hereby is withdrawn.

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-16913 Filed 6-13-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21277; RM-2817]

FM BROADCAST STATION IN FORSYTH, MONTANA

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken proposing assignment of a Class C FM channel to Forsyth, Montana. Petitioner, Gold-Won Radio Corporation, states that the proposed channel would bring the first local full-time service to Forsyth and Rosebud County which area is located within a 100% nighttime "white area."

DATES: Comments must be filed on or before July 20, 1977, and reply comments on or before August 9, 1977.

ADDRESSES: Send commends to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

Adopted: June 2, 1977.

Released: June 9, 1977.

By the Chief, Broadcast Bureau:

1. *Petitioner, Proposal and Comments:* (a) Petition for rule making[1] filed on December 21, 1976, by Gold-Won Radio Corporation ("petitioner"), licensee of AM Station KIKC, Forsyth, Montana, proposing the assignment of Class C Channel 267 to Forsyth, Montana.

(b) This channel could be assigned without affecting any existing FM assignments.

(c) Petitioner, the only commenting party, stated that it will apply for the proposed channel as soon as it is assigned.

2. *Demographic Data:* (a) *Location:* Forsyth, in Rosebud County, is located 160 kilometers (100 miles) northeast of Billings, Montana.

(b) *Population:* Forsyth (pop. 1,873)—Rosebud County (pop. 6,032).[2]

(c) *Local Aural Services:* Daytime AM Station KIKC, licensed to petitioner, is the only aural broadcast service in Forsyth.

3. *Preclusion Studies:* Assignment of Class C Channel 267 to Forsyth, Montana, would cause preclusion to twenty-two communities with populations greater than 1,000 persons. Of these, ten[3] have no local aural broadcast service. A staff study indicates that, of these ten communities, five[4], with a population in excess of 1,500 persons, have alternate channels available for assignment to them.

4. In this case where the community has a population of only 1,873 persons, it would be the usual practice to assign a Class A channel. However, the petitioner requested a Class C channel assignment. Exceptions have been made where it is necessary to provide service to rural or unserved/underserved areas. However, before the Commission is able to determine whether the requested assignment would be in the public interest, additional information is needed. Petitioner should submit in its comments a *Roanoke Rapids*, 9 F.C.C. 672 (1967), study showing the number of people who would receive a first and second FM service from a Class C station in Forsyth. In addition, the petitioner should show the extent of nighttime service provided by standard broadcast stations in the context of first and second aural service. *Anamosa-Iowa City, Iowa*, 40 F.C.C. 2d 250 (1974). Petitioner is also requested to submit a statement as to governmental, business and economic activities of Forsyth to demonstrate the need of the community for a full-time local-aural broadcast service.

5. Comments are invited on the following proposal to amend the Table of Assignments with regard to the community of Forsyth, Montana, as follows:

City	Channel No.	
	Present	Proposed
Forsyth, Mont.		267

6. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures used; and filing requirements are set forth below and are incorporated herein. *Note:* A showing of continuing interest is required by paragraph 2 below before a channel will be assigned.

7. Interested parties may file comments on or before July 20, 1977, and reply comments on or before August 9, 1977.

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

§ 73.202 [Amended]

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counter proposals advanced in this proceeding itself will be considered, if

[1] Public Notice of the petition was given on January 18, 1977, Rept. No. 1026.

[2] Population figures are taken from the 1970 U.S. Census.

[3] *Montana:* Big Timber (pop. 1,592), Columbus (1,173), Harlowton (1,375), Laurel (4,454), Poplar (1,389); *Wyoming:* Basin (1,145), Greybull (1,953), Lovell (2,371), Roundup (2,116), Sundance (1,056).

[4] *Montana:* Big Timber (pop. 1,592), Laurel (4,454), Roundup (2,116); *Wyoming:* Greybull (1,953), Lovell (2,371).

advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420 (d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc.77-16892 Filed 6-13-77;8:45 am]

[47 CFR Part 76]

CABLE TELEVISION ANNUAL FINANCIAL REPORT (FCC FORM 326)

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: On request from the National Cable Television Association, time for filing comments in proceeding involving cable television system annual financial report form is extended.

DATES: Comment must be received on or before June 17, 1977, and Reply Comments must be received on or before July 8, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John Whetzell, Cable Television Bureau, 202-632-9797.

SUPPLEMENTARY INFORMATION:

Adopted: June 2, 1977.

Released: June 9, 1977.

In the matter of amendment of Part 76, subpart F of the Commission's rules and regulations with respect to the cable television annual financial report (FCC Form 326).

By Chief, Cable Television Bureau:

1. The National Cable Television Association has requested that the date for filing comments in this proceeding be extended from June 3 to June 17, 1977 on the grounds that it involves technical accounting matters within the particular expertise of its Financial Affairs Committee, that this Committee has recently been reorganized, and that an additional two weeks will be required to prepare comments responsive to the Notice in this proceeding.

2. Good cause for the requested extension having been shown the time for filing comments in this proceeding will be extended as requested. This is a complex and technical area where the considered comments of those subject to the reporting requirements will be of particular importance. Because of this and the initially short period established for the filing of comments it appears that the request for additional time is warranted.

Accordingly, *it is ordered*, That the time for filing comments in this proceeding is extended until June 17, 1977 and the time for filing reply comments is extended until July 8, 1977.

This action is taken by the Chief, Television Bureau pursuant to authority delegated by Section § 0.288 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION,
JAMES R. HOBSON,
Chief, Cable Television Bureau.

[FR Doc.77-16891 Filed 6-13-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Notice of Proposed Rulemaking and Public Hearing Regarding Test Procedures for Central Air Conditioners

AGENCY: Federal Energy Administration.

ACTION: Proposed rule.

SUMMARY: The Federal Energy Administration hereby proposes to amend its regulations in order to prescribe test procedures for central air conditioners under the Energy Policy and Conservation Act. The Act requires that standard methods for testing central air conditioners be prescribed as part of the energy conservation program for appliances. The intended effect of this proposal is to implement the Act's requirements for the solicitation of public comments before the test procedures are prescribed.

DATES: Comments by August 1, 1977, 4:30 p.m.; requests to speak by July 20, 1977, 4:30 p.m.; statements by August 1, 1977; hearing to be held on August 4, 1977, at 1:30 p.m., e.d.t.

ADDRESSES: Comments and requests to speak at the hearing to: Executive Communications, Room 3317, Federal Energy Administration, Box NB, Washington, D.C. 20461; statements to Executive Communications, Room 3317, Federal Energy Administration, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Hearing held at: Federal Building, Room 3000A, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

James A. Smith (Program Office), Room 307, Old Post Office Building, 12th Street & Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 566-4635.

Robert C. Gillette (Hearing Procedures), 2000 M Street, N.W., Room 2222A, Washington, D.C. 20461, (202) 254-5201.

Jim Merna (Media Relations), 12th and Pennsylvania Avenue, N.W., Room 3104, Washington, D.C. 20461, (202) 566-9833.

Elliott D. Light (Office of General Counsel), 12th and Pennsylvania Avenue, N.W., Room 7148, Washington, D.C. 20461, (202) 566-9750.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

The Federal Energy Administration (FEA) proposes to amend Chapter II of Title 10, Code of Federal Regulations, in order to prescribe test procedures for central air conditioners under section 323, 42 U.S.C. 6293, of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163). The Act requires that FEA prescribe standard methods for testing covered appliances. Development of test procedures is one discrete part of the energy conservation program for appliances. Even when promulgated, final test procedures will not of themselves require testing to be conducted. They will merely establish standard methods for testing when testing is otherwise required by the Act itself or by regulations implementing other parts of the program. For example, the Federal Trade Commission (FTC), in exercising its appliance energy efficiency labelling authority regarding a particular appliance type, may well require the application of substantially less than all of the final test procedures applicable to that appliance type.

By notice issued May 10, 1976 (41 FR 19977, May 14, 1976), FEA proposed to establish Part 430, entitled "Energy Conservation Program for Appliances," in Chapter II of Title 10 of the Code of Federal Regulations. That notice proposed a Subpart A to Part 430, containing general program provisions, and a Sub-

part C, containing proposed energy efficiency improvement targets. By notice issued July 22, 1976 (41 FR 31237, July 27, 1976), FEA proposed an amendment to proposed Part 430 to add a Subpart B which would contain the appliance test procedures required to be prescribed by section 323 of the Act. Subparts A and B were established by notice issued on May 24, 1977 (42 FR 27896, June 1, 1977). Proposed Subpart C has not yet been finalized, and a further proposal of Subpart C will be necessary in order to meet the requirements of section 325(a)(1) of the Act as amended by section 161 of the Energy Conservation and Production Act (Pub. L. 94-385).

The notice issued on May 24, 1977, included final test procedures for room air conditioners. By notice issued March 17, 1977 (42 FR 15423, March 22, 1977) FEA proposed test procedures for dishwashers. This notice also included certain program definitions which have not yet been finalized. Proposed test procedures for water heaters, television receivers, refrigerators and refrigerator-freezers, freezers and clothes dryers were issued on April 21, 1977 (42 FR 21576 *et seq.*, April 27, 1977). Proposed test procedures for unvented home heating equipment were issued on May 4, 1977 (42 FR 23860, May 11, 1977), and proposed test procedures for automatic and semiautomatic clothes washers were issued on May 11, 1977 (42 FR 25329, May 17, 1977), along with a determination that test procedures cannot be proposed for any other class of clothes washer. Proposed test procedures for humidifers and dehumidifers were issued on May 25, 1977 (42 FR 27941 *et seq.*, June 1, 1977). By this notice, FEA is proposing test procedures for central air conditioners.

Section 323(a)(2) of the Act requires FEA to direct the National Bureau of Standards (NBS) to develop, for specifically named types of covered products, test procedures for the determination of the estimated annual operating costs and at least one other useful measure of energy consumption which FEA determines is likely to assist consumers in making purchasing decisions. Pursuant to the Act, FEA directed NBS to develop test procedures for FEA's use in prescribing test procedures under the Act. As part of this undertaking, NBS evaluated existing test procedures for measuring energy consumption of central air conditioners.

NBS has transmitted to FEA a test procedure review document which reviewed existing test procedures for measuring energy consumption for central air conditioners and recommended a test procedure. Copies of this review document will be made available for inspection by interested persons as provided for later in this notice.

The test procedures recommended by NBS and proposed today incorporate in part, test procedures used by the industry to measure the cooling capacity and efficiency of central air conditioning equipment and described in the Air Conditioning and Refrigeration Institute (ARI) Standard 210-75 and the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 37-69. In addition, the proposal incorporates procedures recommended by NBS for determining the national and regional estimated annual operating costs and the seasonal energy efficiencies of central air conditioners. The test procedures apply to central air conditioning units which have a rated cooling capacity less than 65,000 Btu's per hour, are powered by single phase electric current, and have air cooled condensers.

B. Measures of Energy Consumption

The Act requires FEA to prescribe test procedures for the determination of estimated annual operating costs and at least one other useful measure of energy consumption which the Administrator determines is likely to assist consumers in making purchasing decisions.

The estimated annual operating cost is the product of the representative average unit cost of energy as provided by the Administrator, the representative average use cycle (1000 hours of compressor operation), and the average power consumption. The average power consumption is calculated by dividing the highest measured cooling capacity from the steady-state wet-coil test by the seasonal energy efficiency ratio as determined in section 3 of Appendix M.

Also proposed (§ 430.22(m)(2)) as test procedures for the determination of other measures of energy consumption which are likely to assist consumers in making purchasing decisions are test procedures regarding the seasonal energy efficiency ratios. The seasonal energy efficiency ratio is defined as the total cooling output of a central air conditioner during its normal usage period for cooling, divided by the total electric input during the same period. There are two different methods employed to calculate seasonal energy efficiency ratios (SEER), depending upon the equipment configuration. The first method, which is used for units with single speed compressors and single or multiple-speed condenser fans, assumes that the SEER is equal to the energy efficiency ratio of the unit operating under cyclic (i.e., cycling on and off) conditions at an outdoor dry-bulb temperature of 82° F. The value of 82° F has been estimated by NBS to be the national average operating outdoor temperature during the period of the year requiring cooling. This value was obtained by finding the average temperature in different regions of the country and weighting these average temperatures according to the number of central residential cooling units in each region.

The second method, employed for units having two-speed compressors or two compressors, utilizes the results of the steady-state wet-coil tests to define the capacity and power input requirements of the unit as a function of outdoor temperature. A temperature bin method is then used to calculate a seasonal energy efficiency ratio. Both methods of calculating the SEER yield results which are virtually identical when applied to single-speed compressor units.

An additional proposed measure that is likely to assist consumers in making purchasing decisions is the regional estimated annual operating cost, which is the product of the estimated number of regional cooling load hours per year determined from 4.3 of Appendix M, the average unit cost of electricity, and the average power consumption. The average power consumption is calculated by dividing the highest measured cooling capacity from the steady-state wet-coil tests by the average seasonal energy efficiency ratio as determined in section 3 of Appendix M.

FEA recognizes that there may be additional useful measures of energy consumption for central air conditioners other than the measures described above. Accordingly, today's proposal, in proposed subparagraph 430.22(m)(4), provides for other useful measures which the Administrator determines are likely to assist consumers in making purchasing decisions. These measures, however, must be derived from the application of the uniform test method proposed today as Appendix M to Subpart B. Central air conditioner manufacturers would, if required, only have to perform various computations while still applying the same test method contained in Appendix M. For example, if the Administrator determined that a per-hour cost of operation would aid consumers in making purchasing decisions, this cost could be derived by applying the uniform test method to determine an hourly energy consumption rate and multiplying this value by the average unit cost of energy to arrive at a per-hour cost.

C. Laboratory Methodology

Proposed Appendix M to Subpart B provides for a controlled laboratory environment for measuring energy consumption for various central air conditioners which are available to the consumer. The proposed test method consists of two steady-state wet-coil tests labeled "A" and "B," and a method for determining the cyclic performance. Wet-coil tests (tests "A" and "B") are used since in actual operation water condensed from the ambient air will collect on the evaporator coil of a central air conditioner.

Indoor and outdoor ambient conditions are such that a central air conditioning unit will also operate cyclically (i.e., will cycle on and off). Because ambient conditions which would simulate cyclic behavior of central air conditioners are difficult to maintain, NBS has determined that use of cyclic, wet-coil tests is not practical for purposes of the proposed test procedure. However, results from tests have indicated that cyclic wet-coil tests may be replaced by less complicated, more accurate dry-coil tests (labeled "C" and "D" in Appendix M) which are conducted at a low indoor relative humidity resulting in no generation of condensate on the evaporator coil. In the proposal, the dry-coil test is run in

both the cyclic and steady-state modes.

The ratio of the cyclic energy efficiency ratio determined by the cyclic dry-coil test ($EER_{cyc,\ dry}$) to the steady-state energy efficiency ratio determined by the steady-state dry-coil test ($EER_{ss,\ dry}$) closely approximates the ratio of the EER's determined from cyclic and steady-state wet-coil tests at the same load factor. Using this ratio, a degradation coefficient, can be calculated and applied to the steady-state wet-coil test results to reflect cyclic effects. A manufacturer may instead use a degradation coefficient of 0.3 and not utilize tests C and D. The value of 0.3 has been determined by NBS to be a measure of the reduction in the efficiency of a central air conditioner due to cycling of the unit.

D. Representative Average-Use Cycle

Section 323(b)(2) (42 U.S.C. 6293(b)(2)) of the Act provides that test procedures for determining estimated annual operating costs of any covered product shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Administrator) and from representative average unit costs (as provided by the Administrator) needed to operate such product during such cycle. FEA has determined that the representative average-use cycle for central air conditioners is 1000 hours of operation per year. This determination is based upon NBS' recommendation to FEA, which in turn is based upon an NBS report that estimated the annual compressor operating hours for central air conditioners. NBS' recommendation and the report are available for inspection as provided for later in this notice.

FEA intends to develop representative average unit costs of energy needed to calculate national and regional annual operating cost for the representative average-use cycle and to provide this information to manufacturers and FTC on or before the effective date of test procedures for central air conditioners.

E. Number of Units To Be Tested

Proposed § 430.23(m) would provide for sampling of each basic model to be tested when testing of central air conditioners is required by the Act or by program regulations of agencies responsible for administering the Act. This provision is intended both to provide an acceptable level of assurance that test results are applicable to any entire basic model for which testing is required and to minimize the testing burden on manufacturers. FEA believes that the sampling approach proposed today will enable consumers to make meaningful comparisons of information appearing on appliance labels, and also will meet the requirements of section 323(b) of the Act that test procedures not be unduly burdensome to conduct.

Under proposed § 430.23(m), a sample of sufficient size of each basic model would be tested to assure that, for each measure of energy consumption described in § 430.22(m), there is a 90 percent probability that the mean of the values of these measures of the sample is within 5 percent of the true mean of these measures of the basic model. The size of the sample of a particular basic model will depend upon the following factors:

(a) The level of confidence required (set at 90 percent in the proposed regulations);

(b) The maximum allowable difference between the sample mean and the mean of the basic model (expressed in the proposal as a percent of the true mean and set at 5 percent); and

(c) The relationship of the mean and standard deviation of the basic model.

The relationship of the mean and standard deviation of the basic model can be determined from data available to manufacturers. With this information and using standard statistical techniques, manufacturers can determine the number of units required to be tested. In any case, a minimum of 1 unit of each basic model must be tested. Sample units would be selected randomly from the production stream.

Manufacturers and other interested persons are encouraged to comment on the sampling approach. Manufacturers are especially encouraged to submit any data which relates to the size of the samples which the provision would require to be tested. Comments alleging that the sampling provision is burdensome should include a full discussion of the facts upon which such allegation is based.

F. Request for Particular Comments

While FEA is soliciting comments on all aspects of the proposed test procedures for central air conditioners, FEA is particularly interested in receiving comments on any other useful measures of energy consumption or data on typical consumer usage of central air conditioners in addition to those proposed today.

In addition, FEA is interested in receiving comments on any definitions already promulgated or proposed in § 430.2, as discussed above as these definitions might affect the testing of central air conditioners. Comments with respect to these definitions in section 430.2 are timely until the close of the written record, as specified below.

G. Comment Procedure

1. Written comment

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposed test procedures for central air conditioners set forth in this notice to Executive Communications, Room 3317, Federal Energy Administration, Box NB, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA with the designation "Central Air Conditioner Proposed Test Procedures." Fifteen copies should be submitted. All comments received by August 1, 1977, before 4:30 p.m., e.s.t., and all other relevant information, will be considered by FEA before final action is taken on the proposed regulations.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. FEA reserves the right to determine the confidential status of the information or data and treat it according to its determination.

2. Public hearings

a. *Request procedure.* The time and place of the public hearing are indicated at the beginning of this preamble. The hearing will be continued, if necessary, on August 5, 1977. FEA invites any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated at the beginning of this preamble and must be received before 4:30 p.m., e.s.t., on July 20, 1977. Such a request may be hand delivered to such address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Central Air Conditioners—Proposed Test Procedures."

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted through August 4, 1977.

FEA will notify, before 4:30 p.m., July 22, 1977, each person selected to appear at a hearing. Each person selected to be heard must submit 50 copies of her or his statement to the address and by the date given in the beginning of this preamble. In the event any person wishing to testify cannot meet the 50 copy requirement, alternative arrangements can be made with the Office of Regulations Management in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the Office of Regulations Management at (202) 254-3345.

b. *Conduct of Hearing.* FEA reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by FEA with respect to the subject matter

of the hearing will be based on all information available to FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to Executive Communications, FEA, before 4:30 p.m., e.s.t., August 1, 1977. FEA will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the persiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter. A copy of NBS' recommendations concerning test procedures for central air conditioners along with the NBS report on hours of operation for central air conditioners will also be made available for inspection at the FEA Freedom of Information Office.

H. Environmental and Inflationary Review

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator has no comments.

The National Environmental Policy Act of 1969 requires FEA to assess the environmental impacts of any proposal by the Agency for "major Federal actions significantly affecting the quality of the human environment." Since test procedures under the conservation program for appliances will be used only to standardize the measurement of energy usage and will not affect the quantity or distribution of energy usage, FEA has determined that the action of prescribing test procedures, by itself, will not result in any environmental impacts. On this basis, FEA has determined that, with respect to prescribing test procedures under the conservation program for appliances, no environmental impact statement is required.

The proposal has been reviewed in accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular No. A-107 and has been determined not to be a major proposal requiring evaluation of its economic impact as provided for therein.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; E.O. 11790, 39 F.R. 23185)

In consideration of the foregoing, it is proposed to amend Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., June 7, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. Section 430.2 is amended by adding paragraph (13) as part of the definition of "Basic model" and by adding the definition of "central air conditioner", to read as follows:

§ 430.2 Definitions.

* * * * *

"Basic model" means all units of a given type of covered product manufactured by one manufacturer and——

* * * * *

(13) With respect to central air conditioners having essentially identical functional physical and electrical characteristics.

* * * * *

"Central air conditioner" means a consumer appliance which is powered by single phase electric current, which consists of a compressor and an air cooled condenser assembly and an evaporator or cooling coil, which is designed to provide air cooling, dehumidifying, circulating, and air cleaning, and which is rated below 65,000 Btu/hour.

* * * * *

2. Section 430.22 is amended by adding a paragraph (m), to read as follows:

§ 430.22 Test Procedures for Measures of Energy Consumption.

* * * * *

(m) *Central Air Conditioners.* (1) The estimated annual operating cost for central air conditioners shall be the product of:

(i) The quotient of the highest measured cooling capacity from the steady-state wet-coil tests required in 2.7 of Appendix M in Btu's per hour divided by the average seasonal energy efficiency ratio from 3.0 of Appendix M of this subpart, in Btu's per-watt hour; (ii) the representative average use cycle of 1000 hours of compressor operation per year; (iii) a conversion factor of .001 kilowatts per watt; and (iv) a representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(2) The seasonal energy efficiency ratio for central air conditioners, expressed in Btu's per watt-hour, shall be the total seasonal cooling in Btu's divided by the total seasonal energy usage in watt-hours, as determined in 3.0 of Appendix M to this subpart, the resulting quotient then being rounded off to the nearest 0.1 Btu per watt-hour.

(3) The estimated regional annual operating cost for central air conditioners shall be the product of the following three factors: (i) The highest measured cooling capacity from the steady-state wet-coil test in 2.7 of Appendix M of this subpart divided by the average seasonal energy efficiency ratio determined in 3.0 of Appendix M of this subpart; (ii) the estimated number of local cooling load hours per year determined from 4.3 of Appendix M of this subpart; and (iii) a representative average unit cost of electricity in dollars per kilowatt-hour, as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(4) Other useful measures of energy consumption for central air conditioners shall be those measures of energy consumption which the Administrator determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix M of this subpart.

3. Section 430.23 is amended by adding a paragraph (m), to read as follows:

§ 430.23 Units to be tested.

* * * * *

(m) *Central Air Conditioners.* (1) When testing of central air conditioners is required for a measure or measures of energy consumption described in § 430.22 (m) of this subpart, a sample of sufficient size of each basic model shall be tested to ensure that, for each such measure of energy consumption, there is a 90 percent probability that the mean of the sample is within 5 percent of the true mean of such measures of the basic model, except that a minimum of 1 unit of each basic model shall be tested.

(2) The sample selected for paragraph (m)(1) of this section shall be a simple random sample drawn from the production stream of the basic model being tested.

(3) A basic model having dual voltage ratings shall be separately tested at each design voltage such that the requirements of paragraph (m)(1) of this section are satisfied at each rating.

* * * * *

4. Subpart B of Part 430 is amended to add an Appendix M, to read as follows:

Appendix M—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners

1. DEFINITIONS.

1.1 "ARI" means the Air-Conditioning and Refrigeration Institute.

1.2 "ARI Standard 210-75" means the test standard published in 1975 by the ARI and titled "Standard for Unitary Air-Conditioning Equipment".

1.3 "ASHRAE" means the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc.

1.4 "ASHRAE Standard 37-69" means the test standard published by ASHRAE in 1969

and titled "Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment" and designated as ASHRAE Standard 37-69.

1.5 "Cooling load factor (CLF)" means the ratio of the total cooling for a specified period of a complete cycle consisting of an "on" time and "off" time to the steady-state cooling done over the same period at constant ambient conditions.

1.6 "Cyclic test" means a test where the indoor and outdoor conditions are held constant, but the unit is manually turned "on" and "off" for specific time periods to simulate part-load operation.

1.7 "Degradation coefficient (C_D)" means the measure of the efficiency loss due to the cycling of the unit.

1.8 "Dry-coil test" means a test conducted at a wet-bulb temperature and a dry-bulb temperature such that moisture will not condense on evaporator coil of the unit.

1.9 "Latent cooling" means the amount of cooling in Btu's necessary to remove a given amount of water vapor from the air by condensation on the evaporator coil.

1.10 "Part-load factor (PLF)" means the ratio of the cyclic energy efficiency ratio to the steady-state energy efficiency ratio.

1.11 "Seasonal energy efficiency ratio (SEER) "means the total cooling of a central air conditioner in Btu's during its normal usage period for cooling (not to exceed 12 months) divided by the total electric power input in watt-hours during the same period.

1.12 "Sensible cooling" means the amount of cooling in Btu's by a unit over a period of time, excluding latent cooling.

1.13 "Single package unit" means any central air conditioner in which all the major assemblies are enclosed in one system.

1.14 "Split system" means any central air conditioner in which one or more of the major assemblies are separate from the others.

1.15 "Steady-state test" means a test in which all indoor and outdoor conditions are held constant and the unit is in a continuous operating mode.

1.16 "Temperature bin" means a 5° F increment over a dry-bulb temperature range of 65° F to 104° F.

1.17 "Test condition tolerance" means the maximum permissible variation of the average of the test observations as provided in 4.1 of this Appendix.

1.18 "Test operating tolerance" means the maximum permissible difference between the maximum and the minimum instrument observation during a test as provided in 4.1 of this Appendix.

1.19 "Wet-Coil test" means a test conducted at a wet-bulb temperature and a dry-bulb temperature such that moisture will condense on the test unit evaporator coil.

2. TEST METHODOLOGY

2.1 *Test instrumentation.*

2.1.1 The steady state and cyclic performance tests shall have the same requirements pertaining to instrumentation and data as those specified in Section 10 and Table II of ASHRAE Standard 37-69.

2.1.2 The following additional requirements shall apply only to the cyclic dry coil performance tests.

2.1.2.1 The dry-bulb temperature of the air entering and leaving the cooling coil, or the difference between these two dry-bulb temperatures, shall be continuously recorded with instrumentation accurate to within ±0.3° F.

2.1.2.2 Instrumentation used to measure the dry-bulb temperature entering and leaving the coil or the difference between these two temperatures shall have a response time of 2.5 seconds or less. Response time is the time required for the instrumentation to attain 63 percent of the final steady-state temperature difference when subjected to a step change in temperature difference of 15° F or more.

2.1.2.3 The electric energy used by a test unit shall be measured with a watt-hour meter that is accurate to within ±0.5 percent.

2.2 *Test room requirements and equipment installation.* The test room requirement and equipment installation procedures are the same as those specified in sections 11.1 and 11.2 of ASHRAE Standard 37-69. All tests shall be performed at the nameplate rated voltage and frequency.

2.3 *Air quantity and measurement.* Units shall be installed and tested in such a manner that when operated under steady-state conditions, the cooling coil and condenser air flows meet the requirements of sections 5.1.4.3, 5.1.4.4, and 5.1.4.6 of ARI Standard 210-75.

2.4 *Selection of test methods for steady-state and cyclic operation.* All steady-state wet- and dry-coil performance tests on single package units shall simultaneously employ the Air-Enthalpy Method (section 3 of ASHRAE Standard 37-69) on the indoor side and one other method consisting of either the Air-Enthalpy Method or the Compressor Calibration Method (section 4 of ASHRAE Standard 37-69) on the outdoor side. All steady-state wet- and dry-coil performance tests on split systems shall simultaneously employ the Air-Enthalpy Method on the indoor side and either the Air Enthalpy Method or the Compressor Calibration Method on the outside. All cyclic dry-coil performance tests shall employ the Air-Enthalpy Method, indoor side only.

2.5 *Test operating procedures and results.*

2.5.1 Steady-state wet-coil performance tests (A and B) shall be conducted in accordance with the procedures described for cooling tests in section 11.3 of ASHRAE Standard 37-69 and evaluated in accordance with the cooling-related requirements of section 12 of the ASHRAE Standard 37-69.

2.5.2 For the steady-state and cyclic dry-coil performance tests (C and D) those units which do not have indoor-air circulating fans furnished as part of the model shall have their sensible and total cyclic and steady-state capacities calculated as described in 2.13 of this Appendix.

2.5.2.1 The test room reconditioning apparatus and the equipment under test shall be operated until equilibrium conditions are attained, but for not less than one hour before data for test C are recorded.

2.5.2.2 Test C shall be performed with data recorded at ten minute intervals until four consecutive sets of readings are attained within the tolerance prescribed in section 11.6 of ASHRAE Standard 37-69.

2.5.2.3 When the Air-Enthalpy Method is used on the outdoor side for test C, the requirements of 2.5.2.1 and 2.5.2.2 of this Appendix apply to both the preliminary test and the regular equipment test from section 3.6 of ASHRAE Standard 37-69. When the Compressor Calibration Method is employed, 2.5.2.1 and 2.5.2.2 of this Appendix apply to both the equipment test and the compressor calibration test from section 4 of ASHRAE Standard 37-69.

2.5.2.4 For test C, the steady-state dry-coil capacity test results using the Air-Enthalpy Method on the indoor side shall agree within 6 percent of the test results of the test method employed on the outdoor side. Only the results of the Air-Enthalpy Method employed on the indoor side shall then be used.

2.5.2.5 Test D (cyclic dry-coil test) shall be conducted immediately after the completion of test C.

2.5.2.6 Immediately after test C is completed, the test unit shall be manually cycled "off" and "on" using the time periods from 2.7 of this Appendix until steadily repeating ambient conditions are again achieved in both the indoor and outdoor test chambers, but for not less than 2 complete "off"/"on" cycles. Without a break in the cycling pattern, the unit shall be run through an additional "off"/"on" cycle during which the test data required in 2.5.2.9 shall be recorded. During this last cycle, which is referred to as the test cycle, the indoor and outdoor test room ambient conditions shall remain within the tolerances specified in 2.6 of this Appendix.

2.5.2.7 During the cyclic dry-coil tests, all air moving equipment on the condenser side shall cycle "on" and "off" when the compressor cycles "on" and "off." The indoor air moving equipment shall also cycle "off" as governed by any automatic controls normally installed with the unit. This last requirement applies to units having an indoor fan time delay. Units not supplied with an indoor fan time delay shall have the indoor-air moving equipment cycle "on" and "off" as the compressor cycles "on" and "off."

2.5.2.8 The test installation shall be designed such that there will be no air flow through the cooling coil due to natural or forced convection while the indoor fan is "off."

2.5.2.9 For both tests C and D the results shall include the following quantities, calculated by the procedures outlined in 2.13 of this Appendix.

(a) Total cooling capacity in Btu's per hour.

(b) Indoor-side air flow rate in cfm.

(c) External resistance to indoor air flow in inches of water

(d) Total electrical power input to equipment or electrical power input to all equipment components in watts.

(e) Electrical power input to the indoor fan for those units having an indoor fan as part of the model in watts.

(f) Degradation coefficient, C_D, to the nearest 0.02.

2.5.2.10 Section 12.1.5, 12.1.6, 12.1.7 of the ASHRAE Standard 37-69 shall apply for both tests C and D.

2.6 *Test tolerances.*

2.6.1 All steady-state wet- and dry-coil performance tests shall be performed within the applicable operating and test condition tolerances specified in section 11.6 and Table III of ASHRAE Standard 37-69.

2.6.2 The test condition and test operating tolerances for conducting test D are stated in 4.1 of this subpart. Variation in the test conditions greater than the tolerances prescribed in 4.1 of this subpart shall invalidate the test. In order to meet the required air temperature conditions specified in 4.1 of this subpart for test D, it is suggested that an electric resistance heater having a heating capacity approximately equal to the cooling capacity of the unit be installed and that it be cycled "on" and "off" as the test unit cycles "on" and "off" in the indoor test room. A similar heater with a heating capacity approximately equal to the sum of the cooling capacity and compressor and condenser fan power input should be installed and cycled "off" and "on" as the test unit cycles "on" and "off" respectively.

2.7 *Requirement for units with single speed compressors and single speed condenser fans.*

2.7.1 *Steady-state wet-coil tests.* Two steady-state wet-coil tests, test A and test B, shall be performed according to the test pro-

cedures outlined in 2.4 and 2.5 of this Appendix. Test A and test B shall be performed with the air entering the indoor side of the unit having a dry-bulb temperature of 80° F and a wet-bulb temperature of 67° F. The dry-bulb temperature of the air entering the outdoor side of the units shall be 95° F in test A and 82° F in test B. The temperature of the air surrounding the outdoor side of the unit in each test shall be the same as the outdoor entering air temperature except for units or sections thereof intended to be installed only indoors, in which case the dry-bulb temperature surrounding that indoor side of the unit shall be 80° F. For those units which reject condensate to the condenser, located in the outdoor side of the unit, the outdoor wet-bulb temperature surrounding the outdoor side of the unit shall be 75° F in test A and 65° F in test B.

2.7.2 *Cyclic performance.* In order to determine the value of the degradation coefficient, C_D, the cyclic performance of the unit shall be evaluated by conducting tests C and D. In lieu of conducting tests C and D, an assigned value of 0.3 may be used for the degradation coefficient, C_D. Tests C and test D shall be conducted according to the requirements outlined in 2.4 and 2.5 of this Appendix. The indoor dry-bulb temperature for tests C and D shall be 80° F. The indoor wet-bulb temperature for tests C and D shall be a value which does not result in formation of condensate on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57° F or less be used.) The dry-bulb temperature of the air entering the outdoor portion of the unit shall be 82° F. The temperature of the air surrounding the outdoor portion of the unit shall be subject to the same conditions as the requirements for conducting test B as stated in 2.7.1 of this Appendix.

Test C shall be conducted with the unit operating steadily. Test D shall be conducted by manually cycling the unit "on" and "off." The unit shall cycle with the compressor "on" for 6 minutes and "off" for 24 minutes. The indoor fan shall also cycle "on" and "off," the duration of the indoor fan "on" and "off" periods being governed by the automatic controls which the manufacturer normally supplies with the unit. The results of tests C and D shall be used to calculate a degradation coefficient, C_D, by the procedures outlined in 2.13.

2.8 *Requirements for units with single speed compressors and multiple-speed condenser fans.* The test requirements for multiple-speed condenser fan units shall be the same as the test requirements described in section 2.7 for single speed condenser fan units. The condenser fan speed to be used in test A shall be that speed which normally occurs at an outdoor dry-bulb temperature of 95° F, and for tests B, the fan speed shall be that which normally at an outdoor dry-bulb temperature of 82° F. If elected to be performed, tests C and D shall be conducted at the same condenser fan speed as in test B.

2.9 *Requirements for units with two-speed compressors or two compressors.* The test requirements for two-speed compressor units or units with two compressors are the same as described in 2.7 of this Appendix except that test A and test B shall be performed at each compressor speed. The condenser fan speed used in conducting test A at each compressor speed shall be that which normally occurs at an outdoor dry-bulb temperature of 95° F. For test B, the condenser fan speed at each compressor speed shall be that which normally occurs at an outdoor dry-bulb temperature of 82° F. If elected to be performed, tests C and D shall be conducted at the low compressor speed with the same condenser fan speed as used in test B. For those two-speed units in which the normal mode of operation involves cycling the compressor on and off at high speed, tests C and D shall also be performed with the compressor operating at high speed and at a condenser fan speed that is normally occurs at test A ambient conditions. Units consisting of two compressors are subject to the same requirements as those units containing two-speed compressors, except that when operated at high speed, both compressors shall be operating and when operating at low speed, only the compressor which normally operates at an outdoor dry-bulb temperature at 82° F shall be operating.

2.10 *Requirement for units with two-speed compressors or two compressors capable of varying the sensible to total capacity (S/T) ratio.* Where a unit employing a two-speed compressor or two compressors provides a method of varying the ration of their sensible cooling capacity to their total cooling capacity, (S/T), the test requirements are the same as for two-speed compressor units as described in 2.9 of this Appendix. The mode of operation selected for controlling the S/T ratio in the performance of test A and test B at each compressor speed shall be such that it does not result in an operating configuration which is not typical of a normal residential installation. If elected to be performed, test C and D shall be conducted at low compressor speed (single compressor operating) with the same S/T control mode as used in test B when performed with the low compressor speed. Likewise, tests C and D shall also be conducted at high compressor speed (two compressors operating) and with the same S/T control mode as in test A when performed with the high compressor speed.

2.11 *Requirements for split systems.* The applicable test requirements described in 2.7 through 2.10 of this Appendix shall be used for split systems as well as for single package units. The section of the unit containing the compressor and indoor or outdoor coil shall be tested and rated with each evaporator coil which the manufacturer sells with the compressor section of the unit as a matched pair. Split systems shall be tested with the length and size of interconnecting tubing specified in the ARI Standard 210–75.

2.12 *Additional requirements.* The following requirements listed in ARI Standard 210–75 shall apply to test performed under this Appendix:

5.1.1 Values of the standard capacity ratings.

5.1.2 Values of the standard input ratings.

5.1.3 Values of the standard energy efficiency ratio.

5.1.4.2 Voltage and frequency.

5.1.4.3 Cooling coil air quantity.

2.13 *Reduction of Data.* The capacity of a test unit shall be calculated using the results of test A and test B and the equations specified in section 3.7 of ASHRAE Standard 37–69.

For steady-state performance tests, units which do not have indoor-air circulating fans furnished as part of the model shall have their measured total and sensible steady-state cooling capacities adjusted by subtracting 1,250 Btu/hr per 1,000 cfm (cubic feet per minute) of measured indoor air flow and adding to the total steady-state electrical power input 365 watts per 1,000 cfm of measured indoor air flow. The steady-state energy efficiency ratio (EER_{ss}) is the ratio of the adjusted total capacity (Btu/hr) to the adjusted total electrical power input in watts.

For the cyclic performance tests, as in the steady-state performance tests, units which do not have indoor-air circulating fans furnished as part of the model shall adjust their total cooling done and energy used in one complete cycle for the effect of circulating indoor air equipment power. The value to be used for the circulating indoor air equipment power shall be 1,250 Btu/hr per 1,000 cfm of circulating indoor air. The energy usage in one cycle required for indoor air circulation is the product of the circulating indoor air equipment power and the duration of time in one cycle that the circulating indoor air equipment is on. The total cooling shall then be the measured cooling in one complete cycle minus the energy usage required in one complete cycle for indoor-air circulation. The total electrical energy usage shall be the sum of the energy usage required for indoor-air circulation in one complete cycle and the product of the power input to the air conditioning unit and the compressor on time in one complete cycle. The cyclic energy efficiency ratio (EER_{cyc}) is the ratio of the total cooling in Btu's to the total electrical energy usage in watt-hours, where the total cooling and total energy usage have been adjusted by the above-described procedures.

The results of the cyclic and steady-state dry-coil performance tests shall be used in the following (6) equations:

$$(1)\quad \dot{Q}_{cyc,\,dry} = \frac{60 \times \dot{V} \times C_{pa} \times \Gamma}{(v_n^1 \times (1 + W_n))}$$

where $\dot{Q}_{cyc,\,dry}$ = Total cooling over a cycle consisting of one compressor "off" period and one compressor "on" period (Btu's)

$\dot{V}$ = Indoor air flow rate (cfm) at the dry-bulb temperature, humidity ratio, and pressure existing in the region of measurement

C_{pa} = Specific heat at constant pressure of air-water mixture per pound of dry air, (Btu/lb-°F)

v_n^1 = Specific volume of air-water mixture at the same dry-bulb temperature, humidity ratio, and pressure used in the determination of the indoor air flow rate (ft^3/lb)

W_n = Humidity ratio (lb/lb)

and Γ (min-°F), which is described by the equations

$$(2)\quad \Gamma = \begin{cases} 0 & \text{(time indoor fan off)} \\ \int_0^{t_{on}} (T_{a1}(t) - T_{a2}(t))\,dt & \text{(time indoor fan on)} \end{cases}$$

where $T_{a1}(t)$ = Dry-bulb temperature of air entering the indoor coil (°F) at time (t)

$T_{a2}(t)$ = Dry-bulb temperature of air leaving the indoor coil (°F) at time (t)

$$(3)\quad \dot{Q}_{cyc,\,dry} = Q_{cyc,\,dry} / t_{on}$$

where $\dot{Q}_{cyc,\,dry}$ = cyclic capacity (Btu/hr)

t_{on} = Duration of time (hrs) of compressor "on" time in one cycle of duration τ.

τ = Duration of time (hrs) for one complete cycle consisting of one compressor "on" time and one compressor "off" time.

$$(4)\quad EER_{cyc,\,dry} = \frac{Q_{cyc,\,dry}}{E_{cyc,\,dry}}$$

where $EER_{cyc,\,dry}$ = Energy efficiency ratio from test B, (Btu/watt-hr).

$E_{cyc,\,dry}$ = Total electric energy used during a test cycle of duration τ (watt-hrs).

$$(5)\quad CLF = \frac{Q_{cyc,\,dry}}{\dot{Q}_{ss\,dry} \times \tau}$$

where CLF = cooling load factor

$Q_{ss\,dry}$ = Total steady-state cooling capacity from test C (Btu/hr).

The preceding equations are then used in the following equation to calculate a degradation coefficient C_D.

$$(6)\quad C_D = \frac{1 - \frac{EER_{cyc,\,dry}}{EER_{ss,\,dry}}}{1 - CLF}$$

3. SEASONAL PERFORMANCE RATING

3.1 *Method for calculating a SEER for units with single-speed compressor and single-speed condenser fans.* The seasonal energy efficiency ratio for units employing single-speed compressors and single-speed condenser fans shall be based on the performance of test B and a method outlined in 2.7 of this Appendix to account for the cyclic performance.

The seasonal energy efficiency ratio in Btu's/watt-hour shall be determined by the equation:

$SEER = PLF(0.5) \times EER_B$, where

EER_B = energy efficiency ratio determined from test B in 2.7.1.

$PLF(0.5)$ = part-load performance factor determined from the equation:

$PLF(0.5) = 1 - C_D\,(1 - 0.5)$, where

C_D = is the degradation coefficient described in 2.7.2 and 2.13.

3.2 *Method for calculating a SEER for units with single-speed compressors and multi-speed condenser fans.* The seasonal energy efficiency ratio (*SEER*) for units employing single-speed compressors and multi-speed condenser fans shall be based on the energy efficiency ratio obtained for test B and the method outlined in 2.8 of this Appendix to account for the performance under cyclic conditions. The energy efficiency ratio for test B is obtained with the unit operating with the condenser fan speed which normally occurs at test B ambient conditions.

The seasonal energy efficiency ratio in Btu's/watt-hours shall be determined by the equation:

$SEER = PLF(0.5) \times EER_B$, where

EER_B = energy efficiency ratio determined from test B in 2.8.

$PLF(0.5)$ = part-load performance factor as determined from the equation:

$PLF(0.5) = 1 - C_D\,(1 - 0.5)$, where

C_D = the degradation coefficient described in 2.8 and 2.13.

3.3 *Method for calculating a SEER for units with two-speed compressors or two compressors.* The calculation procedure described in this section shall be based on the performance of tests A and B at each of the compressor speeds for two-speed compressor units, subject to the conditions on condenser fan speed described in 2.9.

Units operating with two compressors shall have the *SEER* calculated in the same manner as two-speed compressor units. The superscripted index, $k=1$, (and the term "low speed") designates the compressor that normally operates at an outdoor dry-bulb temperature of 82°F and $k=2$ (and the term "high speed") denotes operation with both compressors.

In order to evaluate the steady-state capacity, $Q_{ss}{}^{k}(T_j)$, and power input, $E_{ss}{}^{k}(T_j)$, at temperature T_j for each compressor speed, $k=1$, $k=2$, the results of tests A and B from 2.13 shall be used in the following equation:

$$Q_{ss}{}^{k}(T_j) = Q_{ss}{}^{k}(95\text{F}) + \frac{Q_{ss}{}^{k}(82\text{F}) - Q_{ss}{}^{k}(95\text{F})}{95-82}\,[33-(5\times j)]$$

where

$Q_{ss}{}^{k}(95\text{F})$ = steady-state capacity measured from test A in 2.9

$Q_{ss}{}^{k}(82\text{F})$ = steady-state capacity measured from test B in 2.9

and

$$E_{ss}{}^{k}(T_j) = E_{ss}{}^{k}(95\text{F}) + \frac{E_{ss}{}^{k}(82\text{F}) - E_{ss}{}^{k}(95\text{F})}{95-82}\,[33-(5\times j)]$$

when

$E_{ss}{}^{k}(95\text{F})$ = electrical power input measured from test A in 2.9

$E_{ss}{}^{k}(82\text{F})$ = electrical power input measured from test B in 2.9

The building cooling load, $BL(T_j)$ for the four cases described in section 3.3.1 through 3.3.4 shall be obtained from the following equation:

$$BL(T_j) = \frac{(5\times j)-3}{95-65} \times \frac{Q_{ss}{}^{k=2}(95\text{F})}{1.1}$$

where

$Q_{ss}{}^{k=2}(95\text{F})$ = steady-state capacity measured from test A in 2.9 at the high compressor speed.

The value of the degradation coefficient $C_D{}^{k=1}$ for low compressor speed cycling and $C_D{}^{k=2}$ for high speed on/off compressor cycling is determined from tests C and D described in section 2.9 and 2.13.

3.3.1 Units operating at low compressor speed ($k=1$) for which the steady-state cooling capacity, $Q_{ss}{}^{k=1}(T_j)$, is greater than or equal to the building cooling load, $BL(T_j)$, evaluate the following equations:

(1) $$X^{k=1} = \frac{BL(T_j)}{Q_{ss}{}^{k=1}(T_j)}$$

where:

$X^{k=1}$ = load factor

$BL(T_j)$ = building cooling load (Btu/hr) at temperature (T_j) from section 3.3

$Q_{ss}{}^{k=1}(T_j)$ = steady-state cooling capacity (Btu/hr) at temperature (T_j) from section 3.3

(2) $$\frac{Q(T_j)}{N} = X^{k=1} \times Q_{ss}{}^{k=1}(T_j) \times \frac{n_j}{N}$$

where

$\frac{Q(T_j)}{N}$ = total cooling (Btu) in temperature bin j

$\frac{n_j}{N}$ is the fractional cooling load in temperature bin j from 4.2.

(3) $$\frac{E(T_j)}{N} = \frac{X^{k=1} \times E_{ss}{}^{k=1}(T_j)}{PLF^{k=1}} \times \frac{n_j}{N}$$

where

$\frac{E(T_j)}{N}$ = energy usage (watt-hr) in temperature bin j

$PLF^{k=1} = 1 - C_D{}^{k=1}(1 - X^{k=1})$

where C_D the degradation coefficient from 2.9 and 2.13.

3.3.2 When a unit must alternate between high ($k=2$) and low ($k=1$) compressor speeds to satisfy the building cooling load at a temperature T_j, evaluate the following equations:

(1) $$X^{k=1} = \frac{Q_{ss}{}^{k=2}(T_j) - BL(T_j)}{Q_{ss}{}^{k=2}(T_j) - Q_{ss}{}^{k=1}(T_j)}$$

(2) $$X^{k=2} = 1 - X^{k=1}$$

(3) $$\frac{Q(T_j)}{N} = [X^{k=1} \times Q_{ss}{}^{k=1}(T_j) + X^{k=2} \times Q_{ss}{}^{k=2}(T_j)] \times \frac{n_j}{N}$$

(4) $$\frac{E(T_j)}{N} = [X^{k=1} \times E_{ss}{}^{k=1}(T_j) + X^{k=2} \times E_{ss}{}^{k=2}(T_j)] \times \frac{n_j}{N}$$

3.3.3 When a unit must cycle on and off at high compressor speed ($k=2$) in order to satisfy the building cooling load at a temperature T_j, shall have a load factor $X^{k=2}$ evaluate the equations provided in section 3.3.1 replacing ($k=2$) data with the ($k=1$) data. The factors PLF,

$$\frac{E(T_j)}{N}, \text{ and } \frac{Q(T_j)}{N}$$

shall be calculated from the equations in section 3.3.1 by replacing ($k=1$) data with the ($k=2$) data.

3.3.4 When a unit operates continuously at high compressor speed ($k=2$) at an outdoor temperature T_j evaluate the following equations:

(1) $$\frac{Q(T_j)}{N} = Q_{ss}{}^{k=2}(T_j) \times \frac{n_j}{N}$$

(2) $$\frac{E(T_j)}{N} = E_{ss}{}^{k=2}(T_j) \times \frac{n_j}{N}$$

3.3.5 Calculate the *SEER* in Btu's/watt-hr, using the values for the terms

$$\frac{Q(T_j)}{N} \text{ and } \frac{E(T_j)}{N}$$

as determined at each temperature bin according to the applicable conditions described in sections 3.3.1 through 3.3.4, as follows:

$$SEER = \frac{\sum_{j=1}^{8} \frac{Q(T_j)}{N}}{\sum_{j=1}^{8} \frac{E(T_j)}{N}}$$

3.4 *Method for calculating a SEER for units with two-speed compressor or two compressors capable of varying the sensible total capacity ratio.* Multi-speed compressor and two-speed compressor units capable of varying the sensible to total capacity ratio (S/T) shall have the seasonal energy efficiency ratio determined as described in section 3.3. For such units, the mode of operation selected to determine the steady-state capabilities, $Q_{ss}{}^{k}$ (95), $Q_{ss}{}^{k}$ (82), E_{ss} (95), $E_{ss}{}^{k}$ (82), and power inputs at each compressor speed $k=1$, $k=2$, for tests A and B outlined in section 2.10.

4. REFERENCE MATERIAL

4.1.—*Test operating and test condition tolerance for cyclic dry-coil tests*

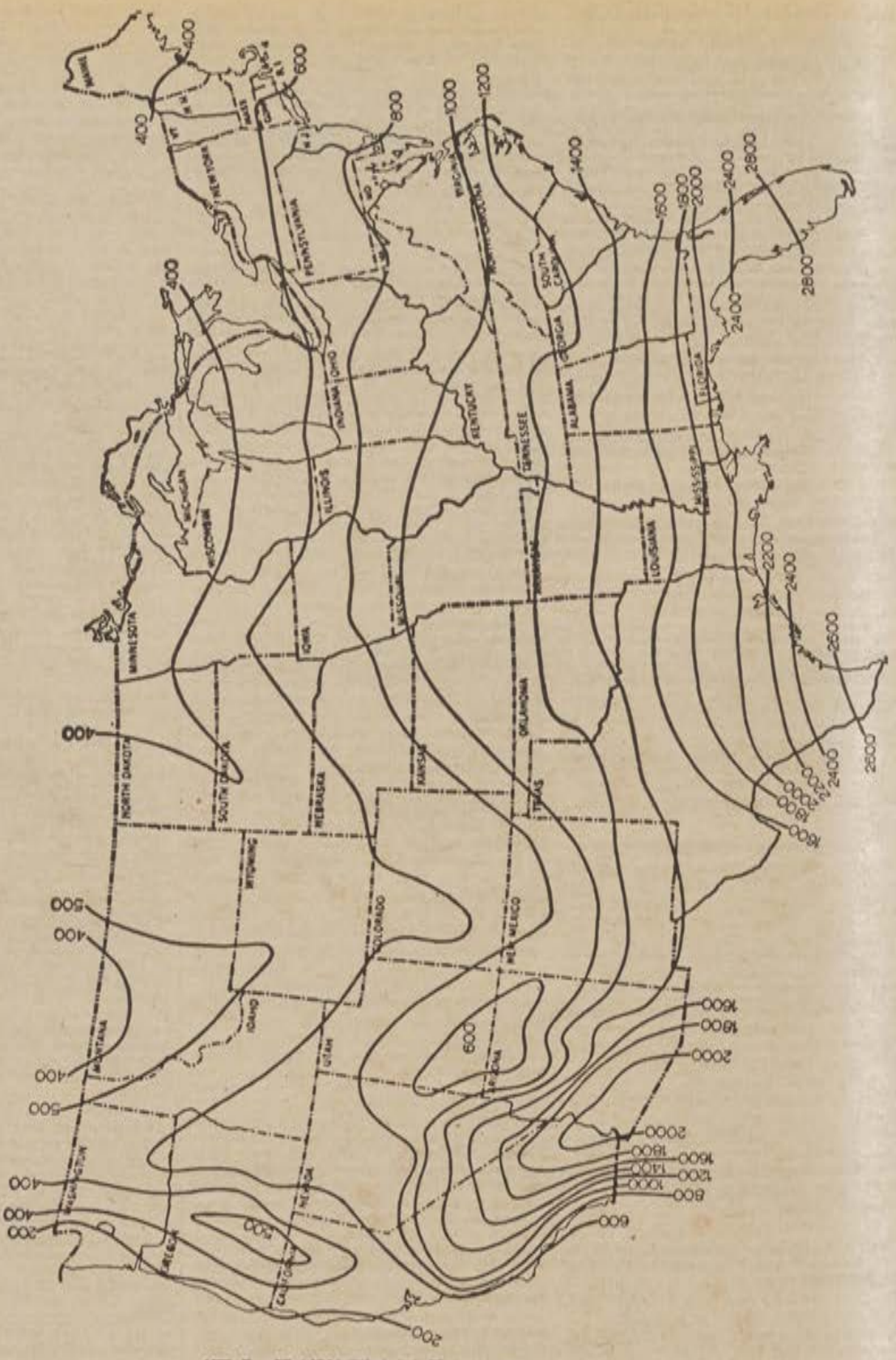
Readings, remarks	Test operating tolerance (total observed range)	Test condition tolerance (variation of average from specified test condition)
Outdoor dry-bulb air temperature, Fahrenheit: Entering	2.0	0.5
Indoor dry-bulb air temperature, Fahrenheit: Entering	2.0	.5
Indoor wet-bulb air temperature, Fahrenheit: Entering	(1)	(1)
After the 1st 30 s after compressor startup:		
External resistance to airflow, inches water	.05	.02
Nozzle pressure drops, percent of reading	2.0	
Electrical voltage inputs to the test unit, percent	2.0	

[1] Shall at no time exceed that value of the wet-bulb temperature which results in the production of condensate by the indoor coil at the dry-bulb temperatures existing for the air entering the indoor portion of the unit.

4.2.—*Distribution of fractional hours in temperature bins to be used for calculation of the SEER for 2-speed compressor and 2-compressor units*

	Bin temperature range (degrees Fahrenheit)	Representative temperature bin for (degrees Fahrenheit)	Fraction of total temperature bin hours $\frac{n_j}{N}$
Bin No., j:			
1	65 to 69	67	.214
2	70 to 74	72	.231
3	75 to 79	77	.216
4	80 to 84	82	.161
5	85 to 89	87	.104
6	90 to 94	92	.052
7	95 to 99	97	.018
8	100 to 104	102	.004

4.3 Distribution of cooling load hours throughout the continental United States to be used in estimating the seasonal operating cost of central air conditioners.



[FR Doc.77-16764 Filed 6-9-77;8:19 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1435]

SUGAR

Proposed Payment Program for 1977

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The proposal would establish a price support payments program beginning with the 1977 crop of sugar. The program is being instituted in response to President Carter's decision regarding sugar announced by the President's Special Representative for Trade Negotiations on May 4, 1977. In the past year sugar prices have fallen sharply to a point less than the costs of production for many U.S. growers. Based on a strong belief that a viable domestic sugar industry is vital to the economic well-being of the American people, the Secretary determined that a program should be undertaken offering payments of up to two cents per pound of sugar to assist producers and processors through the present period of low prices. The objective of the program is to support prices in the market place for sugarbeet and sugarcane producers through payments made to sugar processors.

DATES: Comments must be received on or before: July 14, 1977.

ADDRESSES: Mail comments to Chairman, Sugar Task Force, USDA—ASCS, Post Office Box 2415, Washington, D.C. 20013

FOR FURTHER INFORMATION CONTACT:

Robert R. Stansberry, Jr., 202–447–5735.

SUPPLEMENTARY INFORMATION: The price support payments program for sugar is authorized by Section 301 of the Agricultural Act of 1949, as amended (7 U.S.C. 1447). This provision permits the support price to be established at a level not in excess of 90 percent of the parity price for the commodity. Section 401(b) of the Act (7 U.S.C. 1421(b)) requires, in the case of any commodity for which price support is discretionary, that several factors be taken into consideration in determining whether a price-support operation shall be undertaken and the level of such support. Therefore, in making this proposal, consideration has been given to the following statutory factors:

(1) *Supply of the commodity in relation to the demand therefor.* Since 1974, world sugar production has increased at a rate in excess of consumption, resulting in carryover stocks in excess of normal market needs. The price received by producers in the U.S. is a function of the world market price since the U.S. price is protected only by a small duty of 1.875 cents per pound (there is a non-restrictive quota). The world market price (and, by extension, the U.S. price) is currently depressed and therefore the price received by domestic producers is below their cost of production.

(2) *The price levels at which other commodities are being supported.* This proposal provides for supporting the price of sugar at not more than 13.5 cents per pound, i.e. 52 percent of parity as of April 1977. The only other sweetener for which the market price is supported is honey, which is currently supported at 60 percent of parity.

(3) *The availability of funds.* Payments under this program will be made from the statutory borrowing authority of the Commodity Credit Corporation (CCC). Losses incurred by the CCC are restored by requests for appropriations from the general funds of the Treasury in subsequent years. Price support payments were determined to be limited to two cents per pound because: (1) the U.S. is a net importer of sugar, (2) the President determined that import relief, in the form of import quotas, would not be in the overall national economic interest (including that of both consumers and producers) because of possible international trade repercussions, and therefore (3) the effect would be a support of the world market price for sugar and would mean an unlimited outlay of currency from the U.S. Treasury. The 1.875-cents per pound duty on foreign sugar imported into the United States currently provides about $150 million annually to the general funds of the Treasury, or about 60 percent of the maximum expected annual payment under this program.

(4) *The perishability of the commodity.* The program proposed does not provide for the accumulation and storage of sugar stocks. Sugar crops must be processed soon after harvest in order to prevent spoilage and loss of sugar content. Sugar can be stored for limited periods; however, facilities suitable for storing more than normal working stocks are not now available.

(5) *The importance of the commodity to agriculture and the national economy.* The United States is the third largest producer of sugar (following the EEC and USSR), producing between six and seven million short tons annually, or about 8.0 percent of total world production. However, the United States consumes amout 11.0 million short tons of sugar annually, releying on imports to make up the 4.0 or 4.5 million ton difference between production and consumption. Since 40 or 45 percent of sugar requirements are imported, the world market price effectively determines the domestic price. More than 130 factories process sugarbeets and sugarcane, and there are 22 refineries which process domestic and foreign raw sugar. Between 16,000 and 20,000 domestic farms produce either sugarbeets or sugarcane.

(6) *The ability to dispose of stocks through a price-support operation.* The proposal does not provide for the accumulation of stocks. In addition, if stocks were acquired, their subsequent disposal would further disrupt the market which this program is designed to support.

(7) *The need for offsetting temporary losses of export markets.* The United States consumes about 45 percent more sugar than it produces, and is therefore a net importer of sugar. That small quantity which is exported is generally refined sugars of specialized applications not available elsewhere.

(8) *The ability and willingness of producers to keep supplies in line with demand.* As noted above the United States consumes more sugar than it produces. Although the total market for sugar continues to grow due to population increases, the proportion supplied by the domestic industry has remained fairly constant at about 55 percent of with the remainder being imported from foreign sources.

This proposed method of price support has been selected in order to avoid disrupting the established price differentials existing within and between sales districts based on locational and competitive factors. The level of support in this proposal is not more than 13.5 cents per pound, raw sugar equivalent, which represents approximately 52 percent of parity as of April 1977. If the average price received from the sale of sugar in the market place is less than 11.5 cents per pound, the level of support will be less than 13.5 cents. This is due to the limitation of two cents per pound placed on price support payments.

In accordance with the above, it is proposed to add 7 CFR, Part 1435 to read as follows:

PART 1435—SUGAR

PRICE SUPPORT PAYMENT PROGRAM FOR 1977—CROP SUGAR

Sec.

1435.1 General.
1435.2 Administration.
1435.3 Price support level.
1435.4 Definitions.
1435.5 Price support payment.
1435.6 Eligibility for payment.
1435.7 Cooperatives.
1435.8 Computation of national average market price.
1435.9 Payment allocation.
1435.10 Successors-in-interest.
1435.11 Subterfuge.
1435.12 Setoffs and assignments.
1435.13 Appeals.
1435.14 Records and inspection thereof.
1435.15 False certifications.
1435.16 Forms.

AUTHORITY: Secs. 301–303 and 401 et seq. of the Agricultural Act of 1949, as amended (7 U.S.C. 1447 et seq., 1421 et seq.).

§ 1435.1 General.

This part sets forth the policies, procedures, and requirements governing price support for 1977 crop sugar by the Commodity Credit Corporation (referred to in this part as "CCC").

§ 1435.2 Administration.

The program will be carried out by the Agricultural Stabilization and Conservation Service (referred to in this part as "ASCS") under the general supervision and direction of the Executive Vice President, CCC. In the field, the program will be administered through the State and county ASCS offices. State and county ASCS offices do not have authority to modify or waive any of the provisions of this part or any amend-

ments or supplements thereto unless the power to modify or waive is expressly included in the pertinent provisions.

§ 1435.3 Price support level.

The Secretary has determined that the level of price support for 1977-crop sugar shall be no more than 13.5 cents per pound, raw sugar equivalent. If the national average market price is less than 11.5 cents per pound, raw sugar equivalent, the price support payment rate shall not exceed two cents per pound.

§ 1435.4 Definitions.

(a) "1977 crop year" means sugarbeets and sugarcane generally harvested during the following periods:

Sugar-producing area	*Harvesting period*
A. Mainland beet:	
All States, excl. Cal. and Az.	Sept–Nov 1977
California, excl. southern area	June 1977–Feb 1978
Southern California[1]	March–Aug 1978
Arizona—lowland area	April–June 1978
Arizona—upland area	Sept–Nov 1977
B. Mainland cane:	
Louisiana	Oct 1977–Jan 1978
Florida	Oct 1977–May 1978
Texas	Oct 1977–May 1978
C. Hawaii	Calendar Year 1977
D. Puerto Rico	Dec 1977–July 1978

[1] Southern California includes the counties of Imperial, San Diego, Riverside, Orange, San Bernardino, and that part of Los Angeles lying south of the San Gabriel Mountains.

(b) "Processor" means a processor of refined beet sugar or raw cane sugar.

(c) "Producer" means the owner of a portion or all of the sugarbeets or sugarcane at the time of harvest and delivery to the processor.

(d) "Quantity of sugar marketed" means the pounds of raw cane sugar or refined beet sugar delivered or sold during a specified period as provided herein and for which gross proceeds have been accounted for.

(e) "Gross proceeds" means total receipts from the sale of sugar, F.O.B. factory, plus differential income, less all allowances and discounts and before any freight adjustments.

(f) "Marketing quarter" means the period May 4, 1977, to June 30, 1977, and each subsequent 3-month period beginning July 1, 1977 until all 1977 crop sugar has been marketed.

(g) "National average market price" means the price computed by dividing gross proceeds received by all processors by the quantity of sugar marketed by all processors during the marketing quarter.

(h) "Raw sugar equivalent" means the price relationship of refined beet sugar to raw cane sugar as determined by relating the price received from the sales of refined beet sugar to the price received from the sales of raw cane sugar.

(i) "Secretary" means the Secretary of Agriculture or an official who has been designated to act on his behalf.

(j) "ASCS" means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1435.5 Price support payment.

(a) *General.* Price support on 1977 crop raw cane sugar and refined beet sugar will be furnished in accordance with the provisions of this part by means of payments to the processor on the 1977 crop sugar marketed by the processor during the marketing quarter. Sugar marketed from the 1977 crop prior to May 4, 1977, and sugar in inventory from crops prior to 1977 will not be eligible for price support.

(b) *Rate of payment.* At the end of each marketing quarter and after the Department of Agriculture has determined the national average price for sugar received by processors in that marketing quarter, the Department will announce the rate of payment for sugar marketed during the quarter as determined in accordance with the provisions of this part. The rate of payment per pound will be the amount by which the national average market price is less than 13.5 cents, but not to exceed two cents per pound. If the national average market price is greater than the support price of 13.5 cents per pound, no price support payment would be made for that marketing quarter. Sugar eligible for payment during the quarter would be the quantity of 1977 crop sugar marketed during such marketing quarter.

§ 1435.6 Eligibility for payment.

Before any payment can be approved under this part, the following requirements must be met:

(a) Processor and each producer from whom the processor purchases sugarbeets or sugarcane shall have a written contract stipulating the producer's share of proceeds from the sale of sugar in the market place and the method of payment of such proceeds.

(b) Processor shall agree to pay the producer the full amount of the price support payment after deduction for administrative expenses incurred in carrying out its obligations under this program.

(c) Processor shall submit a report prior to August 1, 1977, showing the quantity of sugar marketed and the gross proceeds received therefrom during the 12-month period May 1, 1976 through April 30, 1977.

(d) Processor shall submit to report showing the quantity of sugar in inventory at the beginning of the 1977 crop harvest.

(e) Processor shall submit a report, within 15 days after the end of each marketing quarter, showing the quantity of sugar marketed from the 1977 crop and the gross proceeds received therefrom.

(f) Processor shall certify that producers have been or will be paid in accordance with their contractual agreement.

§ 1435.7 Cooperative Refiners.

For the purposes of computing "gross proceeds" as used herein, a facility which refines raw cane sugar that is cooperatively owned by its raw cane sugar processors shall be allowed to deduct up to 8 percent from gross proceeds to the cooperative-member processors to reflect that portion of returns which can be attributed to their investment in the refining facility.

§ 1435.8 Computation of national average market price.

(a) The quantity of sugar marketed and the gross proceeds received therefrom during the 12-month period ending April 30, 1977, as submitted by processors in accordance with § 1435.6(c), will provide the basis for converting gross proceeds received for refined beet sugar to a raw sugar equivalent basis. The percentage by which the average price received for refined beet sugar exceeds the average market price received for raw cane sugar will be computed.

(b) The quarterly determination of the national average market price will be computed on the basis of information received from processors on the quantity of sugar marketed and the gross proceeds received therefrom during the marketing quarter as provided for in § 1435.6(e). The computation will be as follows: (1) The percentage determined in accordance with paragraph (a) of this section will be used to reduce the gross proceeds received for refined beet sugar to a raw sugar equivalent basis; (2) the gross proceeds received for refined beet sugar, after conversion to a raw sugar equivalent basis, will be added to the gross proceeds received for raw acne sugar; (3) the total quantity of refined beet sugar marketed will be converted to raw value by multiplying the quantity by 1.07; and (4) the total gross proceeds will be divided by the total quantity of sugar, raw value, marketed to obtain the national average market price.

§ 1435.9 Payment allocation.

(a) *Payment to processor.* The total price support payment will be made to the processor. The processor will be allowed to deduct actual administrative expenses which are directly incurred as the result of distributing payments to producers and fulfilling the other requirements herein. Such administrative expenses must be readily identifiable as actual expenditures incurred only because of this program. Allowable administrative cost may include such items as increased labor, automated data systems use, postage, and the processing of bank drafts. It would not include general administrative and overhead expenses incurred in the processor's normal operations. The processor shall submit a report itemizing administrative expenses for approval by the Executive Vice President, CCC.

(b) *Payment to producer.* The processor shall pay the producer the full amount of the support payment received, after deduction for administrative expenses. Proration of the payment among all producers for each marketing quarter shall be made on the basis of the quantity of sugar actually produced from cane or beets harvested and delivered by each

producer to the processor, or on the quantity of sugar estimated to be produced during the crop year from cane or beets to be harvested and delivered by each producer to the processor. If proration of the payment to the producer is made on the basis of sugar estimated to be produced, the processor shall adjust such estimated payment to an actual payment based on the quantity of sugar actually produced by the producer. Such adjustment to an actual basis shall be made at the end of the marketing quarter in which the total quanity of sugar produced from the crop has been marketed by the processor: *Provided*, That any overpayment or ineligible payment shall be subject to refund.

§ 1435.10 Successors-in-interest.

(a) In the case of the death, incompetency, or disappearance of any producer, the payment due him shall be made to his successor as determined in accordance with the regulations in Part 707 of this title.

(b) When any person who had an interest as a producer of sugar is succeeded on the farm by another producer, payments to the producers shall be divided between them on such basis as they agree is fair and equitable. If an agreement cannot be reached, the division shall be made as determined by the Executive Vice President, CCC, or his designee.

§ 1435.11 Subterfuge.

The processor shall not reduce returns to the producer below those determined in accordance with the requirements herein through any subterfuge or device whatsoever.

§ 1435.12 Setoffs and assignments.

(a) *Processor or producer indebtedness.* The regulations issued by the Secretary governing setoffs and withholding, Part 13 of this title, shall be applicable to the program.

(b) *Assignments.* Payments may be assigned only to the Farmers Home Administration in accordance with the regulations in Part 709 of this title.

§ 1435.13 Appeals.

A producer may obtain reconsideration and review of determinations made under this part in accordance with the regulations in Part 780 of this title.

§ 1435.14 Records and inspection thereof.

CCC shall reserve the right to have access to the premises of the processor, in order to inspect, examine, and make copies of the books, records, accounts, and other written data used in furnishing reports required by this part.

§ 1435.15 False certifications.

Any false certification which is made for the purpose of enabling a processor or producer to obtain any price support payment or portion thereof to which he is not entitled, will subject the processor making such certification to liability under applicable Federal civil and criminal statutes.

§ 1435.16 Forms.

Processors shall submit the reports required by this part on Form SU–1, "Sugar Processor Certifications," to the Executive Vice President, CCC.

Signed at Washington, D.C., on June 10, 1977.

JOHN C. WHITE,
Acting Secretary.

[FR Doc.77–17073 Filed 6–13–77;9:46 am]

notices

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

ACTION

PRIVACY ACT OF 1974

Routine Use Adoption

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: This regulation is to provide routine disclosure of information as requested to GSA/NARS for records management inspection purposes.

EFFECTIVE DATE: June 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard Doyle, Associate General Counsel, Office of the General Counsel, ACTION, Washington, D.C. 20525 (202–254–7974).

SUPPLEMENTARY INFORMATION: On March 7, 1977 there was published a proposal to amend ACTION's notice of systems of records published in 41 FR 238 December 9, 1976, by adding to the Preliminary Statement under the heading "Statement of General Routine Uses" therein an additional routine use.

No written objections were received and the proposed regulation is hereby adopted without change.

10. A record from any system of records may be disclosed as a routine use to the National Archives and Records Service, General Services Administration, in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Section 505(c) of the Federal Records Act of 1950 (44 U.S.C. 595(c)) authorizes the Administrator of General Services to inspect or survey, personally or by deputy, the records of any Federal agency, as well as to make surveys of records management and records disposal practices in such agencies.

In keeping with the above authority ACTION will make its records available to the National Archives and Records Service for inspection purposes.

Approved in Washington, D.C. on June 6, 1977.

JAMES DUKE,
Executive Officer.

[FR Doc.77-16765 Filed 6-13-77;8:45 am]

ADMINISTRATOR, EMERGENCY NATURAL GAS ACT OF 1977

[Docket Nos. E77-10; E77-21; E77-38]

COLUMBIA GAS TRANSMISSION, ET AL.

Supplemental Emergency Order

On May 25, 1977, Columbia Gas Transmission (Columbia) filed, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), a supplemental petition requesting authorization to (i) exchange gas with Michigan Wisconsin Pipe Line Company (Mich-Wis), (ii) reduce deliveries to UGI Corporation (UGI) up to 25,000 Mcfd and use such volumes to satisfy UGI's pay back obligation in Docket No. E77-21, and (iii) transport volumes purchased from Delhi Gas Pipe Line Corporation (Delhi) through the facilities of Transwestern Pipeline Company (Transwestern). For the reason set forth below, I grant Columbia's supplemental requests.

By order issued February 6, 1977, in Docket No. E77-10, Columbia was authorized to purchase up to 60,000 Mcfd from Pacific Lighting Service Company (Pacific). Columbia was required, as a condition of the purchase to repay to Pacific thermally equivalent volumes of gas. From February 5 through February 26, 1977, Columbia received approximately 2.647 Bcf.

In Docket No. E77-21 Columbia and UGI were authorized to purchase up to 100,000 Mcfd (75,000 Mcfd to Columbia, 25,000 Mcfd) to UGI from Pacific Gas & Electric Company (PG&E). Columbia and UGI are obligated to repay thermally equivalent volumes to PG&E. From February 20 through March 8, 1977, Columbia received 1.242 Bcf and UGI received 0.144 Bcf.

In Docket No. E77-38, Columbia was authorized to purchase up to an average of 60,000 Mcfd from Delhi. By supplemental order issued March 30, 1977, Columbia was authorized to use the Delhi volumes to satisfy in part its and the Columbia Distribution Companies' repayment obligation to Pacific and PG&E.[1]

Michigan Wisconsin Pipeline Company (Mich-Wis) has agreed to purchase up to 30,000 Mcfd of emergency gas in the Western Oklahoma area and has asked El Paso Natural Gas Company (El Paso) and Columbia to take delivery of these supplies. El Paso agreed to take delivery of the gas at the El Paso-Mich Wis interconnnection in Roger Mills County, Oklahoma, and to deliver the gas to Dumas Gasoline Plant in Moore County, Texas. At the Dumas Gasoline Plant, the gas will be transferred from Mich-Wis's account to Columbia's account; El Paso will deliver the gas to PG&E at the California-Arizona border in partial fullfillment of Columbia's pay back obligation. In turn, Columbia will transfer equivalent volumes of natural gas to Mich-Wis at various mutually agreeable points in Louisiana. Such deliveries will be made for Columbia by Columbia Gulf Transmission Company (Columbia Gulf).

Columbia and Mich-Wis have agreed to exchange up to 30,000 Mcfd on an Mcf for Mcf basis. There are no charges associated with the exchange. El Paso will charge Columbia one cent per Mcf for gas delivered to PG&E plus 5% of the volumes received for fuel usage. Columbia will charge its customers $1.23 per Mcf (its average cost of gas in Louisiana) plus EL Paso's transportation charges.

UGI has arranged to satisfy its repayment obliagtion to PG&E by reducing its entitlements from Columbia under rate schedules CDS. The total reduction in UGI's entitlements is estimated to be approximately 0.151 Bcf.

On May 7, 1977, El Paso began deliveries of gas from Delhi for Columbia's account to Transwestern Pipeline Company (Transwestern) at an existing interconnection in Ward County, Texas. Transwestern will redeliver these volumes to Pacific as partial fulfillment of Columbia's pay back obligation. There is no transportation charge for Transwestern's redelivery of gas to Pacific.

Pursuant to Section 6(a) of the Act, I hereby authorize (1) the exchange of emergency gas volumes between Columbia and Mich-Wis, and the transportation of said volumes by El Paso to fulfill partially Columbia's pay back obligation; (2) the fulfillment of UGI's pay back obligation to PG&E as previously described; (3) the transportation of volumes of gas from Delhi to Pacific via Transwestern as partial fulfillment of Columbia's pay back obligation.

To the extent not inconsistent with this order, the provisions of all orders issued in Docket Nos. E77-10, E77-21, and E77-38 remain in full force and effect. All protections and authorizations granted therein remain in full force and effect.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Columbia, Pacific, PG&E, El Paso, UGI, Transwestern, Delhi, Mich Wis, Columbia Gulf, and the Columbia Distribution Companies. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

JUNE 7, 1977.

[FR Doc.77-16994 Filed 6-13-77;8:45 am]

[1] In Docket No. E77-30, the Columbia Distribution Companies were authorized to purchase up to 30,000 Mcfd from Pacific. Total volumes delivered under this authorization were approximately 1.029 Bcf.

[Docket No. E77-116]

DELHI GAS PIPELINE CORP., ET AL.

Emergency Order

On June 6, 1977, Delhi Gas Pipeline Corporation (Delhi) filed, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application to sell up to 9.1 Bcf to United Gas Pipeline Company, (United) on an "if, as and when available" basis subject to available pipeline capacity for a term from June 11, 1977 through July 31, 1977. For the reasons set forth below, I authorize these emergency sales.

Delhi will charge and United will purchase the subject volumes at $2.05 per MMBtu of gas delivered in the state of Oklahoma and $2.245 per MMBtu of gas delivered in the state of Texas, both inclusive of all state and local taxes and other adjustments. I find such prices to be fair and equitable in accordance with Order No. 2.

Delhi will deliver this gas for the account of United to Panhandle Eastern Pipeline Company in Dewey, Woodward and Major counties, Oklahoma; to either Kansas-Nebraska Gas Company, or Arkansas-Louisiana Gas Company in Roger Mills County, Oklahoma; to Arkansas-Louisiana Gas Company in Blaine and Custer Counties, Oklahoma and to Northern Natural Gas Company in Pecos County, Texas. Delhi will, at its own expense, install or cause to be installed all necessary taps, valves and metering facilities to make the subject deliveries. Therefore, there is no reason to require United to pay the cost of such facilities as permitted by § 6(c)(1) of the Act (91 Stat. 4, 8).

Delhi advises and I find that the sale of gas by Delhi will result in a commingling of interstate natural gas with Delhi's normal intrastate system gas supplies and with volumes of gas owned by third parties. Contractual provisions between Delhi and its producers, suppliers, and customers prohibit the sale of natural gas in interstate commerce and the commingling of Delhi's intrastate pipeline system gas supplies with gas moving in interstate commerce. The sale, transportation and delivery of gas for which Delhi seeks approval may result in some commingling of interstate natural gas with Delhi's normal intrastate gas supplies and with gas owned by third parties. This order shall be considered as applying to all such commingled gas. Under the provisions of Section 9(b),(c) of P.L. 95-2 (91 Stat. at 9), the suppliers of such gas which is so commingled, may not terminate existing contracts with Delhi or such other parties or require a redetermination of the prices provided in such contracts by reason of this transaction. Contractual termination, prohibition or redetermination provisions in any such contracts referred to above are not enforceable by reason of Section 9 of Public Law 95-2 since Delhi is selling, delivering and transporting gas for United pursuant to Section 6(a) of that Act. Delhi and any third person whose gas is commingled with United's gas shall refer all relevant information concerning any attempt to terminate existing contracts or require a redetermination of prices to the Administrator for appropriate action.

According to the official files of the Federal Power Commission, Delhi is not classified as a natural gas company within the meaning of the Natural Gas Act. Section 6(b)(1)(A) of the Act provides in part that "[t]he provisions of the Natural Gas Act shall not apply * * * to any sale to an interstate pipeline * * * under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with such sale * * *" 91 Stat. at 8. In addition, § 6(c)(2) provides:

> Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulaiton under the Natural Gas Act or to regulation as a common carrier under any provision of state law.

Thus, the sale of this gas will not subject Delhi or any person supplying gas to Delhi to the provisions of the Natural Gas Act or to regulation as a common carrier under state law.

United shall submit weekly reports as required by Order No. 4.

Pursuant to Section 6(a) of the Act, I hereby authorize Delhi to sell to United up to 9.1 Bcf of natural gas on the terms and conditions set forth in Delhi's filing in this proceeding.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Delhi, United, Panhandle Eastern Pipeline Company, Kansas-Nebraska Gas Company, Arkansas-Louisiana Gas Company, and Northern Natural Gas Company. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

JUNE 7, 1977.

[FR Doc.77-16993 Filed 6-13-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Illinois Grain Inspection Areas

Statement of considerations. Pursuant to sections 7(e)(1) and 7A(c)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*), hereinafter the "Act", the Federal Grain Inspection Service is required to provide official inspection and weighing services for all grains required or authorized to be inspected and weighed by the Act, at those export port locations where a state is not delegated to perform these official services (7 U.S.C. 79(e)(1) and 7 U.S.C. 79a(c)(1)).

The Federal Grain Inspection Service will assume performance of official inspection and weighing services at such export port locations within 18 months of the November 20, 1976, effective date of the amended Act; provided that, subject to meeting certain requirements of the Act, existing official agencies may continue to function during such transition period.

Chicago Grain Inspection Bureau, Chicago, Illinois, a designated official agency at the following counties, or portions thereof, of Illinois: Boone, DeKalb, Porter, Lake, and Cook, ceased providing official inspection services effective midnight, January 31, 1977, in accordance with prior notice to the Federal Grain Inspection Service.

Notice is hereby given that, effective February 1, 1977, the designation of the Chicago Grain Inspection Bureau, Chicago, Illinois, as an official agency, has been canceled pursuant to the provisions of section 7(g)(2) (7 U.S.C. 79(g)(2)) and (7 U.S.C. 74 note) of the Act.

The Federal Grain Inspection Service, effective February 1, 1977, commenced providing official grain inspection services at the area previously serviced by the Chicago Grain Inspection Bureau including the following counties, or portions thereof, of Illinois: Boone, DeKalb, Poter, Lake, and Cook, in accordance with sections 7(e)(1) and 27 of the Act (7 U.S.C. 79(e)(1) and 7 U.S.C. 74 note). The Federal Grain Inspection Service, effective April 11, 1977, commenced providing official grain weighing services at the area previously serviced by the Chicago Grain Inspection Bureau in accordance with sections 7A(c)(1) and 27 of the Act (7 U.S.C. 79a(c)(1) and 7 U.S.C. 74 note).

(Sec. 8, (Pub. L. 94-582) 90 Stat. 2870 (7 U.S.C. 79); sec. 7A, (Pub. L. 94-582) 90 Stat. 2875 (7 U.S.C. 79A); sec. 27, (Pub. L. 94-582) 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C., on: June 9, 1977.

WILLIAM T. MANLEY,
Interim Administrator.

[FR Doc.77-16803 Filed 6-13-77;8:45 am]

GRAIN STANDARDS

Illinois Grain Inspection Point

Statement of considerations. The Illinois State Department of Agriculture, Springfield, Illinois, is designated to operate as an official agency in accordance with the provisions of section 7(f) of the U.S. Grain Standards Act (7 U.S.C. 79(f)). The Illinois State Department of Agriculture has been providing official inspection service for approximately eight years at Fairfield, Illinois; for approximately seven years at Casey, Illinois; and for approximately eleven years at Shawneetown, Illinois, as designated inspection points. A designated inspection point is defined as a city, town, or other location assigned under the regulations to an official inspection agency for the conduct of official inspections, and within which the official inspection agency, or one or more of its licensed inspectors, is located, (7 CFR 26.1(b)(13)).

The Illinois State Department of Agriculture has requested that its designation be amended to revoke Fairfield, Casey, and Shawneetown, Illinois, as designated inspection points and to add Mt. Vernon and Marion, Illinois, as designated inspection points in accordance with section 26.99(b) of the regulations (7 CFR 26.99(b)). Additionally, the Illinois State Department of Agriculture proposes to retain Fairfield, Casey, and Shawneetown, Illinois, as official sampling points.

In order to continue availability of the service and to allow the Illinois State Department of Agriculture to provide more efficient official inspection services at centralized locations as soon as practicable, its designation is amended to revoke Casey, Fairfield, and Shawneetown, Illinois, as designated inspection points and Mt. Vernon and Marion, Illinois, are hereby added as designated inspection points; provided, however, that these amendments shall be on an interim basis for a period not to exceed ninety days pending a determination of this matter.

As a point of clarification, it should be noted that the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*), hereinafter referred to as the "Act", has been amended by Public Law 94-582, effective November 20, 1976, to extensively modify the official inspection system. The amended Act provides, in part, that the Administrator of the newly-created Federal Grain Inspection Service (FGIS), after conducting investigations and other studies, designate official agencies or persons presently designated to provide official inspection services. The amended Act further provides that existing agencies may continue to operate without a designation under the new law until the Administrator either grants or denies such designation to them or sets a period of time for their termination, not to exceed 2 years from the effective date of the amended Act, provided such agencies pay any required fees to FGIS.

Accordingly, the amendment of assigned inspection points would, if approved by the Department, not alter the existing designation of applicant as an official inspection agency which continues until the Administrator of FGIS either grants or denies an official designation under the amended Act or sets a period of time for its termination.

Other interested persons are hereby given opportunity to submit written views and comments with respect to this matter or to make application for designation to operate as an official inspection agency at Fairfield, Casey, Shawneetown, Mt. Vernon, and/or Marion, Illinois, pursuant to the requirements set forth in section 7(f)(1)(A) of the amended Act (7 U.S.C. 79(f)(1)(A)), and section 26.96 of the regulations thereunder (7 CFR 26.96).

NOTE.—Section 7(f) of the Act (7 U.S.C. 79(f)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

All such views, comments, or applications should be submitted in writing to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All materials should be in duplicate and mailed to the Hearing Clerk not later than July 14, 1977. All materials submitted pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views, comments, or applications to be filed with the Hearing Clerk and to all other information available to the U.S. Department of Agriculture before final determination is made with respect to this matter.

(Sec. 7, (Pub. L. 94-582) 90 Stat. 2872, (7 U.S.C. 79(g)(2)), 7 CFR 26.99(b), 7 CFR 26.101).

Done in Washington, D.C., on June 9, 1977.

WILLIAM T. MANLEY,
Interim Administrator.

[FR Doc.77-16804 Filed 6-13-77;8:45 am]

Soil Conservation Service

BATAVIA KILL WATERSHED PROJECT, NEW YORK

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Batavia Kill Watershed project, Greene County, New York.

The environmental assessment of this Federal action indicates that the project will not create significant adverse local, regional or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection, flood prevention, and public fish and wildlife and recreation development. The planned works of improvement as described in the negative declaration include the development of basic recreation facilities at multiple-purpose structure No. 1.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various Federal, State, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, U.S. Courthouse and Federal Building, Room 771, 100 South Clinton Street, Syracuse, New York 13202. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation on the proposal will be taken until June 29, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Public Law 83-566, 16 U.S.C. 1001-1008.)

Dated: June 3, 1977.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc.77-16797 Filed 6-13-77;8:45 am]

NANTICOKE CREEK WATERSHED PROJECT, NEW YORK

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Nanticoke Creek Watershed project, Broome and Tioga Counties, New York.

The environmental assessment of this Federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The planned works of improvements as described in the negative declaration include conservation land treatment supplemented by two single purpose floodwater retarding structures and eight dike systems with a total length of 26,000 feet.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various Federal, State, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 771, Syracuse, New York 13202. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation on the proposal will be taken until June 29, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection

and Flood Prevention Program—Public Law 83-566, 16 USC 1001-1008.)

Dated: June 3, 1977.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc.77-16796 Filed 6-13-77;8:45 am]

SQUARE BUTTE CREEK WATERSHED PROJECT, NORTH DAKOTA

Availability of Negative Declaration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Square Butte Creek Watershed Project, Oliver and Morton Counties, North Dakota.

The environmental assessment of this Federal action indicates that the project will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. Allen L. Fisk, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement as described in the negative declaration include conservation land treatment supplemented by three single-purpose floodwater retarding structures and two, one-half mile long floodways.

The negative declaration is being filed with the Council on Environmental Quality and copies are being sent to various Federal, State, and local agencies. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, Room 270, Federal Building, Rosser Avenue & 3rd Street, Bismarck, North Dakota 58501. A limited number of copies of the negative declaration is available from the same address to fill single copy requests.

No administrative action on implementation on the proposal will be taken until June 29, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, 16 USC 1001-1008.)

Dated: June 3, 1977.

JOSEPH W. HASS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc.77-16798 Filed 6-13-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-6-43; Docket 29910]

BRANIFF AIRWAYS, INC.

Order Providing for Further Procedures in Accordance With Subpart N Expedited Procedures

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of June, 1977.

On May 3, 1977, Braniff Airways filed an application pursuant to Subpart N of Part 302 of the Board's Procedural Regulations, for amendment of its certificate of public convenience and necessity for Route 9 so as to permit it to provide nonstop service between Omaha, Nebraska, and Dallas/Ft. Worth, Texas.[1]

Frontier filed a statement requesting dismissal. Frontier holds and exercises one-stop authority in the Omaha-Dallas/Ft. Worth market.

Upon consideration of the foregoing, we do not find that the application is not in compliance with, or is inappropriate for processing under the provisions of Subpart N. Accordingly, we order further proceedings pursuant to the provisions of Subpart N, sections 302.1406–1410, with respect to the above application.[2]

Accordingly, *it is ordered*, That:

1. The application of Braniff Airways, Inc. be and it hereby is set for further proceedings pursuant to sections 302.1406–1410 of the Board's Procedural Regulations; and

2. This order shall be served on all parties served by Braniff in its application.

This order shall be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 77-16919 Filed 6-13-77;8:45 am]

[Order 77-6-40; Docket 29123, Agreement C.A.B. 26260 R-16]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of June, 1977.

By Order 77-2-68, dated February 14, 1977, the Board, inter alia, disapproved that portion of Agreement C.A.B. 26260 which proposed to amend Resolution 279, the resolution which sets forth procedures to be followed when a passenger requests a change in his ticket. Specifically, the amendment which was disapproved stipulated that in the event a passenger requested a rerouting which took place at a point which was a fare-calculation point, then the fare should be recalculated from that point. The Board also concluded that the then existing provision which, in all cases, recalculated the fare from the last fare-calculation point preceding the point at which rerouting took place, likewise did not provide equitable treatment for the passenger. Accordingly, the Board conditioned its outstanding approval of Resolution 279 to provide that the fare for a rerouting could not exceed the appropriate fare for the new routing from the point of origin.

In a petition filed March 21, 1977, Air New Zealand, Ltd. (ANZ) requests reconsideration of the above action. The petitioner contends that, in evaluating the effect of the resolution, the Board considered only the passenger, not the carriers; that rerouting in mid-journey may create complex accounting problems relating to prorates which transcend the simple clerical cost of making physical changes in the ticket; and that to recalculate each prorate involves a costly and complex billing procedure and to let the original division stand results in inequitable allotments among carriers. ANZ contends that the most equitable solution for all concerned is the one agreed to by the carriers and disapproved by the Board. Finally, the carrier alleges that, although the Board's order suggested a flat charge to cover any significant reticketing or rerouting expenses, such charge would be a poor approximation, considering the many variables affecting the cost of changing a ticket; that this problem is minimized if the fare is not recalculated for portions of an itinerary already flown; and that as a matter of equity to carriers and other passengers, the rerouted passenger should pay the fare of the revised trip.

Upon due consideration of the arguments advanced by ANZ and all other relevant matters, the Board has determined to deny the petition and let its condition stand.

As stated in our February order, in some cases under both the original and amended versions of Resolution 279, the passenger may be required to pay a total charge that exceeds that for the same travel had it been purchased and ticketed at point of origin. This clearly does not treat the rerouted passenger equitably. Further, we do not agree with ANZ's contention that the best solution to any accounting or rebilling difficulties that may be encountered as a result of a rerouting is that to which the carriers have agreed. While the technical clearing-house procedures are not completely clear, it would seem that any rerouting which results in a change of fare would have to be re-prorated in any event and that, therefore, the carrier's proposed solution does little to minimize

[1] By Order 77-2-120, February 24, 1977, the Board denied Braniff's petition for an order to show cause wherein Braniff sought Omaha-Dallas/Ft. Worth nonstop authority. In denying the carrier's request for show-cause procedures, we noted that Subpart N procedures appeared to be the appropriate vehicle for processing this particular application.

[2] In the event no person files an appropriate pleading in opposition to said application which requests a public hearing thereon, the Board may grant said application without further notice or hearing.

any procedural difficulties which may be involved. The Board confirms its willingness to consider any agreement which establishes a flat charge to cover expenses incurred in rerouting a passenger if these expenses can be shown to be of consequence, as an equitable approach for both carriers and passengers.

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

It is ordered that:

The petition filed by Air New Zealand, Ltd. for reconsideration of Order 77-2-68 be and hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-16918 Filed 6-13-77;8:45 am]

[Docket 30698]

MAERSK AIR I/S

Environmental Rejection

On April 21, 1977, Maersk Air I/S submitted an environmental evaluation, pursuant to § 312.12(a)(1) of the Board's Procedural Regulations, in connection with its application for renewal of its foreign air carrier permit authorizing it to engage in foreign charter air transportation.

Maersk Air's environmental evaluation is based upon the assumption that it would operate approximately 50 round-trip charter flights during 1978 between Copenhagen, Denmark, on the one hand, and New York, Boston, Philadelphia, Hartford, and Washington, on the other. All flights would use B-707-720B equipment.

Pursuant to §§ 312.8 and 312.13 of the Board's Procedural Regulations, the undersigned—having reviewed the environtal evaluation and other available information with respect to the application described above and having been duly designated by the Director, Bureau of Operating Rights, pursuant to § 312.8—hereby finds that any subsequent Board action approving, denying, or otherwise acting upon such application would not constitute a "major Federal action significantly affecting the quality of the environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Dated at Washington, D.C., June 8, 1977.

BARBARA A. CLARK,
Chief, Legal Division,
Bureau of Operating Rights.

[FR Doc.77-16914 Filed 6-13-77;8:45 am]

[Order 77-6-38; Docket 30698]

MAERSK AIR I/S

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 8th day of June, 1977.

By application filed April 6, 1977, Maersk Air I/S requests renewal of its foreign air carrier permit, issued by Order 75-8-135, approved August 26, 1975. Maersk Air seeks renewal of its authority to engage in charter foreign air transportation as follows:

(1) Charter flights with respect to persons and their accompanied baggage between any point or points in Denmark and any point or points in the United States;

(2) Planeload charter flights with respect to property between any point or points in Denmark and any point or points in the United States, limited to ten one-way flights within any calendar year;

(3) Circle tour charter flights with respect to persons and their accompanying baggage which originate and terminate at a point or points in Denmark and serve a point or points in the United States and a point or points in any country other than Denmark and the United States;

(4) Charter flights with respect to persons and their accompanying baggage between any point or points in Austria, Belgium, Cyprus, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and any point or points in the United States, limited to charter flights which originate in a named European country; and

(5) Circle tour charter flights with respect to persons and their accompanying baggage which originate and terminate at a point or points in Austria, Belgium, Cyprus, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and serve a point or points in the United States and a point or points in any country other than a named European country and the United States.

On April 21, 1977 Maersk Air filed a motion for an order to show cause why the Board should not grant its application. The applicant states that no purpose would be served by the holding of a hearing in this proceeding since the material facts pertinent to its renewal application remain essentially unchanged since the issuance of its current permit in August, 1975.

BACKGROUND

Maersk Air I/S is a Danish corporate partnership whose principal place of business is located at Copenhagen Airport South, DK-2791, Dagør, Denmark. It was issued its present merit by Order 75-8-135, approved August 26, 1975. That permit expires on August 26, 1977.[1] The instant application seeks renewal of the authority contained in Maersk's existing permit.

OWNERSHIP AND CONTROL

Maersk Air is a partnership organized and registered under the laws of Denmark. It is wholly owned by two Danish holding companies, A/S Maersk Aviation and A/S Flyaktieselskabet, each of which holds a fifty percent interest. A/S Maersk Aviation is wholly owned by A/S Dampskibsselskabet of 1912, and A/S Flyaktieselskabet is wholly owned by A/S Dampskibsselskabet Svendborg. The two grandparent companies are publicly owned steamship companies organized under the laws of Denmark.

Essentially all of applicant's directors and management personnel are Danish citizens.[2] The directors of applicant's parent and grandparent companies are also all Danish citizens. Thus, it is tentatively concluded that Maersk Air is substantially owned and effectively controlled by citizens of Denmark.

FINANCIAL AND OPERATIONAL FITNESS

Maersk Air holds a concession from the Government of Denmark to perform the charter services embraced by its application. Its operations are regulated by the Directorate of Civil Aviation, Civil Aviation Administration. Maersk Air has been operating since December 1969, both domestically and internationally. There is no indication that its operations have been other than satisfactory and in full accordance with Danish and U.S. Regulations.

Substantial assets are held by the applicant and its corporate partners. Maersk Air's 1976 balance sheet shows total assets of 275.9 million Kr.[3] The balance sheet of its corporate partner, A/S Maersk Aviation, shows assets of 12.2 million Kr. Its other corporate partner, Flyaktiesselskabet Maersk, has assets of 11.1 million Kr. There has been no instance brought to the attention of the Board of Maersk Air failing to meet a financial obligation or transportation commitment. Thus, it is tentatively concluded that the fitness requirements of section 402 of the Act have been met by the applicant.

PUBLIC INTEREST

On the basis of comity and reciprocity, it is tentatively concluded that it is in the public interest to grant Maersk Air the requested permit. The Danish aviation authorities impose no uplift limitations or other restrictions on the number of charter flights operated by U.S. carriers. They permit fifth freedom charters on a reciprocal basis and apply the same regulations to U.S. carriers as they apply to Danish carriers. Thus, it cannot be concluded that there is any lack of reciprocity or comity which would warrant denying a permit to Maersk Air.

On the basis of the foregoing and all the facts of record, it is tentatively found and concluded that:

1. It is in the public interest to issue a foreign air carrier permit to Maersk Air I/S authorizing it to engage in charter foreign air transportation as described in the text of this order;

2. Maersk Air I/S is substantially owned and effectively controlled by citizens of Denmark;

3. The exercise of the privileges granted by the foreign air carrier permit described above

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[1] Applicant has stated its intention to rely on section 9(b) of the Administrative Procedure Act, 5. U.S.C. 558(c), to continue its current operating authority pending a final determination on its application.

[2] The sole exception is the general manager of Maersk Air who is a Norwegian citizen.

[3] Approximately 6.00 Kr.=$1.00.

should be subject to the terms, conditions, and limitations contained in the specimen form of permit attached hereto, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

4. Maersk Air I/S is fit, willing, and able properly to perform the above-described foreign air transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

5. Except to the extent granted herein, the application of Maersk Air I/S in Docket 30698 should be denied; and

6. An evidentiary hearing is not required in the public interest.[4]

Accordingly, *It is ordered*, That:

1. All interested persons be and they hereby are directed to show cause why the Board should not make final the tentative findings and conclusions stated herein, and why a foreign air carrier permit in the form of the specimen permit attached hereto should not, subject to the approval of the President pursuant to section 801 of the Act, be issued to Maersk Air I/S;

2. Any interested person having objections to the issuance of an order making final the tentative findings and conclusions herein, or to the issuance of the proposed foreign air carrier permit, shall file a statement of objections, fully supported by evidence, within 21 days after adoption of this order; answers to objections shall be filed within 10 days thereafter;

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;[5]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. This order shall be served upon Maersk Air I/S, Pan American World Airways, Inc., Capitol International Airways, Inc., Overseas National Airways, Inc., Trans International Airlines, Inc., World Airways, Inc., the Ambassador of Denmark in Washington, D.C., and the United States Department of State.

[4] By Notice of Environmental Rejection, contemporaneously issued with this order, the Chief of Legal Division, Bureau of Operating Rights, having reviewed the environmental evaluation provided with Maersk Air's motion, has found, pursuant to section 312.13 of the Board's Procedural Regulations, that the action contemplated herein would not constitute a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

[5] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

This order will be published in the FEDERAL REGISTER and will be transmitted to the President.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

UNITED STATES OF AMERICA

Civil Aeronautics Board, Washington, D.C.

Permit to Foreign Air Carrier
(as amended)

Maersk Air I/S, is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in charter foreign air transportation as follows:

1. Charter flights with respect to persons and their accompanying baggage between any point or points in Denmark and any point or points in the United States.

2. Planeload charter flights with respect to property between any point or points in Denmark and any point or points in the United States, limited to ten one-way flights within any calendar year.

3. Circle tour charter flights with respect to persons and their accompanying baggage which originate and terminate at a point or points in Denmark and serve a point or points in the United States and a point or points in any country other than Denmark and the United States.

4. Charter flights with respect to persons and their accompanying baggage between any point or points in Austria, Belgium, Cyprus, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and any point or points in the United States, limited to charter flights which originate in a named European country.

5. Circle tour charter flights with respect to persons and their accompanying baggage which originate and terminate at a point or points in Austria, Belgium, Cyprus, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and serve a point or points in the United States and a point or points in any country other than a named European country and the United States.

This permit shall be subject to the following terms, conditions, and limitations:

(1) With respect to the authorization contained in paragraphs 1, 2, and 3 above, the holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Denmark, or transport any person whose journey, by any means of transportation, begins or ends at a point not in the United States or Denmark: *Provided*, That this condition shall not prevent the holder, under the authorization contained in paragraph 3 above, from serving a point or points in any foreign country between the point of origin and point of termination of the charter flight in Denmark, or prevent the holder from carrying between a point or points in Denmark and a point or points in the United States charters originating in one of the European countries named in paragraph 4 or 5 above.

(2) During any calendar year in which the holder: (a) operates less than 18 charter trips originating outside the United States, the number of United States-originated charter trips shall not exceed those originating outside the United States by more than six; (b) operates between 18 and 45 charter trips originating outside the United States, the number of United States-originated charter trips shall not exceed those originating outside the United States by more than one-third; (c) operates more than 45 charter trips originating outside the United States, the number of United States-originated charter trips shall not exceed those originating outside the United States by more than 15. Any charter originating in one country and flown to another, whether one way or round trip, will be considered one charter trip for these purposes.

(3) The exercise of the privileges granted by this permit shall be subject to the provisions of Part 214 of the Board's Economic Regulations, and all amendments and revisions thereof as the Board, by order or regulation and without hearing, may adopt.

(4) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(5) The holder shall not operate charters for or on behalf of air freight forwarders.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Denmark for Danish International air service.

(7) The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(8) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(9) By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(10) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international

air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Denmark shall be parties.

(11) The holder shall not commence any service authorized herein, except pursuant to an initial tariff setting forth rates, fares, and charges no lower than rates, fares, or charges that are then in effect for any U.S. supplemental air carrier in the same foreign air transportation.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on ----------, and shall terminate five years thereafter: *Provided, however,* That if during said period the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Denmark are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention or agreement.

In Witness Whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the ----------.

Secretary.

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on ----------, in ----------.

[FR Doc.77-16917 Filed 6-13-77;8:45 am]

[Docket Nos. 28515, 28913, 28578, 28604, 28668, 29095, 29321, 29379; Order 77-6-34]

CIVIL AERONAUTICS BOARD

VARIOUS AIR CARRIERS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 8th day of June, 1977.

Order to Show Cause

There are currently pending before the Board five applications under which two scheduled air carriers—Pan American World Airways and Trans World Airlines—and three supplemental air carriers—Overseas National Airways (ONA), Trans International Airlines (TIA) and World Airways—request that the Board either grant approval under section 408 of the Act, or an exemption therefrom, for the relationships which would result from the acquisition of control of various tour operator subsidiaries which would market non-inclusive tour type charters inbound to the United States from various European points.[1] In addition, in Docket 29095, TWA is seeking further authority for its control of its proposed subsidiary in the United Kingdom insofar as that subsidiary would market inclusive tours on its regularly scheduled flights. In response to the foregoing applications, and various other matters, two petitions for declaratory rulings have been filed by the Pathfinder Corporation, in Docket 29321, and by Unitours, Inc., in Docket 29379. These petitions request that the Board rule, in effect, that if airlines are permitted to acquire control of tour operators, then tour operators should be permitted to acquire control of airlines, or, alternatively, that it issue a policy statement that acquisitions of airlines by tour operators are not, as such, inconsistent with the standards set forth in section 408 of the Act.

Pursuant to section 302.12 of its Economic Regulations, the Board has decided to consolidate the eight matters which are the subject of this order. In our view, these matters involve the same or closely related issues and their contemporaneous consideration will be conducive to the proper dispatch of justice. We have decided not to consolidate three additional applications (Dockets 29030, 29060 and 29283) in which three supplemental air carriers are seeking to control tour operator subsidiaries in the United States. Since these applications involve proposed control relationships with tour operators which would market U.S.-originating charters—a matter which raises separate questions outside the scope of this order—they will not be considered at the present time.[2]

Movant	*Dockets sought to be consolidated*
TIA ----------	28604, 28578 and 28515.
Airline charter tour operators associations (ACTOA).	28379, 27233, 27914, 28515, 28668, 28604, 28913, 28578, 29030 and 2960.
Pathfinder ---	29321, 28515, 28913, 29095, 29030, 28578, 28604, 29060 and 28668.

We will first turn to a discussion of the applications of the five direct air carriers requesting approval or exemption of their control of various tour operator subsidiaries which would market non-inclusive tour type charters inbound to the United States. Briefly summarized, the authority being requested pursuant to these applications is as follows:

Answers to TIA's motion were filed by World and Pan American, to ACTOA's motion by TIA, World and Pan American, and to Pathfinder's motion by TWA, World and Unitours. Certain of these answers were accompanied by motions for leave to file otherwise unauthorized documents, which we intend to grant.

Finally, various motions for immediate action have been filed by World, TIA and TWA, and various answers thereto have been filed by Pan American and Pathfinder.

Applicant	Docket	Requested authority
Pan American...	28515	Control of a wholly owned tour-operator subsidiary which would market advance booking charters (ABC's) in the United Kingdom.[3]
TWA.....	28913	Control of a tour-operator subsidiary which would market ABC's in the United Kingdom.[4]
ONA.....	28668	Control of wholly owned tour-operator subsidiaries in the United Kingdom, France, the Netherlands, and the Federal Republic of Germany, which would market charters in those countries other than inclusive tour charters.
TIA.....	28604	Control of wholly owned tour-operator subsidiaries in Belgium, France, the Federal Republic of Germany, Italy, the Netherlands, Spain, and/or the United Kingdom, which would market charters in those countries other than inclusive tour charters.
World.....	28578	Control of wholly owned tour-operator subsidiaries in France, the Federal Republic of Germany, the Netherlands, and the United Kingdom which would market charters in those countries other than inclusive tour charters.[5]

The economic arguments and justifications which have been advanced in support of the five applications outlined above are quite similar. In essence, it has been submitted that direct control of charter marketing subsidiaries will result in substantial economies and is necessary to achieve competitive equality with foreign air carriers who have already integrated vertically.[6] The increased operational efficiences, in the carriers view, will result chiefly from an increased ability to monitor bookings and detect cancellations. The carriers state that these efficiencies should lead to a reduction in

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[1] These applications are pending in Dockets 28515, 28913, 28668, 28604 and 28578, respectively.

[2] A number of motions have been filed requesting consolidation of the dockets which are the subject of this order, the applications of the supplementals seeking domestic authority and various other matters. To the extent these motions request consolidation of the matters which are the subject of this order, we will grant them for the reasons stated herein. Briefly summarized, the motions are as follows:

[3] According to Pan American, its subsidiary, Pan Am Thriftway Ltd., was formed as a shell company in April 1975, but presently is inactive. Should the Board authorize its control of this subsidiary, Pan American notes that it would still be necessary for it to obtain an Air Transport Organizer's license from the Civil Aviation Authority in the United Kingdom before it can start doing business.

[4] TWA states that its plans provide for the establishment of a subsidiary with the name of Trans World Holidays U.S.A., Ltd. and a share capital of $2,000.

[5] ONA, TIA, and World have stated that their proposed subsidiary corporations would be organized under the laws of the foreign jurisdictions in which they would operate and would, to the extent permitted by local law, be wholly-owned and controlled. Alternatively, it is stated that one or more of the corporations might be organized under the laws of the United States and controlled to the extent permitted by the law of the foreign jurisdiction in which it would operate.

[6] The carriers point out that in the United Kingdom, British Airways owns and controls Overseas Air Travel Limited; Laker Airways Ltd. owns and controls Laker Air Travel Limited; and British Caledonian Airways owns and controls Golden Lion, Ltd.; that in France, Air France owns and controls Jet Tours; that in the Netherlands, KLM owns and controls Long Range Travel; and that in Germany, Lufthansa coordinates German-originating ABC's with the travel arm of the state railway organization.

ferry mileage, improved crew utilization and more rational maintenance planning. It has also been pointed out that such vertical integration enables a carrier to control the retail price of a charter, and thereby eliminate the independent retailer commission.

The carriers have also submitted various economic data to show the competitive impact the vertical integration of foreign air carriers has had on their marketing efforts abroad. TIA and World, for instance, in their jointly filed motion for immediate action, point out that they have recently suffered "severe business losses" in the United Kingdom and the Netherlands. Indeed, the situation in these two coutries has deteriorated to the point where today neither carrier is operating any U.S.-destined charters.[4]

In terms of market share, TIA and World point out that, while the number of charter seats operated between the United Kingdom and the U.S. by U.S. and British flag carriers increased by 62 percent between 1972 and 1975, 96 percent of this gain went to the British carriers.[5] Similarly, it is noted that, while the number of charter seats operated from the Netherlands to the U.S. rose by 110 percent between 1972 and 1975, 99 percent of that growth went to the Dutch carriers.[6] The two carriers note further that in France, Spain and Belgium, Air France's Sotair and Jet Tours, Iberia's Mundi Color, and Sabena's Sabena Air Tours are garnering more and more business for their parent carriers at the expense of U.S. carriers.[7]

An answer in support of the relief requested by the foregoing applications was filed by the National Air Carrier Association (NACA).[8] NACA submits that U.S. scheduled air carriers should be permitted to market foreign-originating charters but only if U.S. supplemental air carriers are also permitted to do so. NACA also contends that section 101(36) of the Act does not prohibit supplemental air carriers from marketing foreign-originating ABC charters, and other non-inclusive tour type foreign-originating charters, since the restrictive provisions of that section are limited to inclusive tour type charters.

An answer in opposition to TWA's application in Docket 28913 was filed by the Airline Charter Tour Operators Association (ACTOA).[9] ACTOA[10] submits that TWA's application to own and control a U.K.-based ABC tour operator should be denied since it would violate the statutory distinction between scheduled and charter service, and since it would be highly anticompetitive. In this latter connection, ACTOA notes that the Board found a common control relationship between a supplemental air carrier and a tour operator to be adverse to the public interest in the Reopened Transamerica Corporation and Trans International Airlines, Inc. case, Order 71-7-119. ACTOA also requests that TWA's application be set for a hearing should the Board consider granting the relief sought therein.

The petitions for declaratory rulings filed by Pathfinder and Unitours[11] are essentially opposed to a grant of the authority being sought by the foregoing applications.[12] In support of its request, Pathfinder submits, as does Unitours, that the effects of vertical integration are the same whether an airline acquires a tour operator or a tour operator acquires an airline, and that the Board should not discriminate between vertical integration initiated by airlines, and that initiated by tour operators. Pathfinder makes clear, however, that in the first instance it does not believe vertical relationships between airlines and tour operators should be authorized.[13] In addition, Pathfinder apparently is requesting a hearing on the five charter applications as well as the TWA application in Docket 29095.

As was noted at the outset, TWA has an additional application pending in Docket 29095 which requests that we exempt or approve its control of its proposed subsidiary in the United Kingdom insofar as that subsidiary would market inclusive tours on its regularly scheduled flights. TWA states that the sole purpose of this application is to enable it to gain membership in the Association of British Travel Agents (ABTA). TWA notes that its inclusive tour program in the United Kingdom is currently being boycotted by retail travel agents since ABTA membership is required for tour marketing and is not open to airlines, but rather only to tour operators. Since its British competitors already control tour operator subsidiaries, and thereby qualify for ABTA support, TWA submits that it is at a severe competitive disadvantage in the United Kingdom inclusive tour market.[14]

An answer in opposition to TWA's application in this docket was filed by NACA. NACA submits that TWA's application should be denied, or, alternatively, set for a hearing. In particular, NACA is concerned that favorable action on TWA's application would permit it to market inclusive tour charters. A similar concern was raised by World in an answer it filed to a TWA motion for immediate action. Thereafter, TWA filed a supplement to its application in which it states unequivocally that it is only seeking authority in this docket for its subsidiary to market inclusive tours in conjunction with its scheduled services.[15]

Upon consideration of the foregoing matters and all relevant facts, the Board has tentatively concluded that (1) the applications in Dockets 28515, 28913, 28578, 28604 and 28668 should be approved; (2) TWA's application in Docket 29095 should be approved; and (3) the petitions for declaratory rulings filed in Dockets 29321 and 29379 should be denied. In reaching this decision, the Board has also tentatively concluded, for the reasons stated herein, that it is not precluded by section 101(36) of the Act from approving the applications of the supplemental air carriers in Dockets 28578, 28604 and 28668 seeking limited authority to market non-inclusive tour type charters from various foreign points.

In tentatively deciding to approve the five applications in Dockets 28515, 28913, 28578, 28604 and 28668, the Board has tentatively concluded that an ample demonstration has been made by the applicants that U.S. air carriers are currently at a severe competitive disadvantage in many foreign-originating charter markets because of the vertical integration of competing foreign air carriers. The purpose of the action proposed herein, therefore, would be to improve the competitive posture of both U.S. scheduled and supplemental air carriers in the market for foreign-originating charters by placing these carriers on a more equal footing with their foreign competitors.

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[4] In the United Kingdom, for example, World's annual passenger revenues decreased from $1,750,000 in 1974 to $0 for the first 11 months of 1976. Similarly, in the Netherlands its revenues have decreased from $500,000 in 1974 to nothing today. TWA forecast that it would lose $650,000 in the U.K. ABC market during 1976.

[5] TIA and World state that while U.S. supplemental air carriers accounted for 25.6 percent of the U.K.-U.S. charter market in 1972, by 1975 their share had fallen to 3.1 percent.

[6] Moreover, it is noted that the supplemental's share of the number of Netherlands-U.S. charter seats operated fell from 50.3 percent in 1972 to 9.8 percent in 1975.

[7] Additional economic data detailing the competitive implications of the vertical integration of foreign air carriers are set forth in the motion for immediate action filed by World.

[8] NACA represents various U.S. supplemental air carriers. It filed answers to TWA's application in Docket 28913, and the Pan American application. The NACA carriers have compiled with Part 263 of our Regulations.

[9] ACTOA's answer was accompanied by a motion for leave to file an otherwise unauthorized document, which shall be granted. Originally, ACTOA had also filed an answer in opposition to TWA's application in Docket 29095, but it withdrew this answer when it learned that TWA is only seeking authority in that docket to market inclusive tours on its regularly scheduled flights.

[10] ACTOA notes that it is an association of tour operators which are engaged in the marketing of charter transportation.

[11] World filed an answer in opposition to Pathfinder's petition.

[12] It also appears that Pathfinder and Unitours are opposed to TWA's application in Docket 29095.

[13] Pathfinder submits that even if the Board approves the applications which are the subject of this order (i.e., those applications limited to European-originating charters and tours), there would still be anticompetitive implications affecting non-integrated tour operators.

[14] TWA also notes that Air France and Alitalia recently established tour operator subsidiaries in the U.K. for the same reason it has filed the instant application.

[15] In a late-filed answer, World requested a hearing on TWA's applications in Dockets 29095 and 28913, and Pan American's application in Docket 28515. World's answer was accompanied by a motion for leave to file an otherwise unauthorized document which shall be granted. However, World subsequently withdrew its hearing request.

In proposing this action, the Board has recognized in large part that the prime business activity and chief competitive impact of each of the proposed subsidiaries would occur in a foreign jurisdiction, and that each such subsidiary will require local regulatory approval before operations can commence. Moreover, the Board believes this action would be consistent with the various disclaimers of jurisdiction in our regulations over foreign tour operators organizing charters outside the United States,[16] based on our perception that such activities fall more within the purview of the regulatory authorities of the concerned foreign jurisdictions. We similarly intend to disclaim jurisdiction over the foreign-originating charter marketing activities of the tour operator subsidiaries of U.S. air carriers insofar as they qualify as foreign tour operators.

The Board has also tentatively concluded that it would not be precluded by section 101(36) of the Act from approving the applications of the three supplemental air carriers in Dockets 28578, 28604 and 28668. Section 101(36) of the Act defines supplemental air transportation. In pertinent part, it reads:

> Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

It should be noted that the preceding language only restricts supplemental air carriers from marketing "inclusive tour" type charters, and, as has been indicated, in their applications the supplementals have expressly stated that they are only seeking authority to control subsidiaries which would market non-inclusive tour type charters. Thus, it is the tentative conclusion of the Board, based both on the language of the statute, and the facts on record, that it would not be precluded from granting the limited relief currently being requested by the supplemental carriers.[17]

The Board has thus tentatively concluded that the five foregoing applications should be approved. Although the proposed acquisitions of control will involve acquisitions of various phases of aeronautics, and therefore are subject to section 408(a)(6) of the Act, the Board tentatively finds that none of the proposed acquisitions of control will affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, result in creating a monopoly or tend to restrain competition.

We have also tentatively decided that the public interest does not require trial-type hearings with opportunities for oral presentation and cross examination on any of the five foregoing applications. Thus, we have tentatively determined that the requests of ACTOA and Pathfinder for trial-type hearings should be denied. In our view, the use of show cause procedures in this proceeding is appropriate. The purpose of a hearing, of course, is to resolve issues of fact. However, we tentatively find that the record in this proceeding presents no genuine issues of material fact. The action proposed herein rests on policy grounds and on facts already in the record which are not in dispute,[18] in particular the competitively unfavorable situation in which U.S. Air carriers currently find themselves in attempting to market European-originating charters.

As noted, the Board has also tentatively decided to approve TWA's application in Docket 29095, and thereby sanction its control of its proposed subsidiary in the United Kingdom insofar as that subsidiary would market inclusive tours on its regularly scheduled flights. It is firmly established that scheduled airlines should be permitted to market inclusive tours on their regularly scheduled flights either directly on an in-house basis or indirectly by controlling a tour operator subsidiary. Indeed, this policy was reaffirmed by us quite recently. By Order 76-12-101, we denied two petitions requestiong initiation of rulemaking proceedings aimed at prohibiting the direct marketing of inclusive tours by scheduled air carriers on their regularly scheduled flights. In taking this action, we considered but rejected the various contentions of the petitioners that these activities were anticompetitive and detrimental to the continued existence of the independent tour operator industry.[19]

We believe that the facts are clear here. In its application, TWA states that its proposed subsidiary would only market inclusive tours in conjunction with its regularly scheduled flights. Moreover, it notes that it is establishing a separate subsidiary to market inclusive tours (rather than marketing them directly on an in-house basis) only to obtain the necessary support of the Association of British Travel Agents. It is thus evident that TWA is only seeking authority to do indirectly what it is already authorized to do directly.

The Board has thus tentatively concluded that TWA's application in Docket 29095 should be approved. Although the proposed acquisition of control will result in the acquisition of a phase of aeronautics by an air carrier, and therefore is subject to section 408(a)(6) of the Act, the Board tentatively finds that the acquisition will not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, will not result in creating a monopoly or tend to restrain competition.

The Board also tentatively finds that the public interest does not require a trial-type hearing on this application, and that the requests of NACA and Pathfinder for such hearings should be denied. Again, it is the tentative view of the Board that show cause procedures are appropriate here. Moreover, with respect to the NACA request, it appears that NACA has misinterpreted the nature of TWA's application. In seeking a hearing, NACA submits that the purpose of TWA's application in this docket is to permit its proposed subsidiary to market inclusive tour charters. However, this is not the case. As has been discussed, TWA is only seeking authority in this docket for its subsidiary to market inclusive tours in conjunction with its regularly scheduled services, not its charter services.

Finally, the Board has tentatively decided that the two petitions filed in Dockets 29321 and 29379 should be denied. To sumarize, in Docket 29321, Pathfinder is requesting a declaratory ruling to the effect that if airlines are permitted to acquire control of tour operators, then tour operators should be permitted to acquire control of airlines; or, alternatively, a policy statement to the effect that acquisitions of airlines by tour operators are not, as such, inconsistent

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[16] See, for instance, sections 378.3a (disclaiming jurisdiction over foreign-originating Inclusive Tour Charters), 372a.20a (disclaiming jurisdiction over foreign-originating Travel Group Charters), 378a.23 (disclaiming jurisdiction over foreign-originating One-Stop Tour Charter), and 371.23 (disclaiming jurisdiction over foreign-originating Advance Booking Charters) of the Board's Special Regulations.

[17] In any event, it would appear that Congress would not have intended to preclude such acquisitions under the circumstances here present. The Congressional intent, it must be presumed, was to apply the prohibition with respect to U.S.-originating or domestic charters, where Board regulations precluded organization of "inclusive tour" charters by direct air carriers. With respect to foreign-originating charters, however, different concepts apply, and, as noted, the foreign rules do not preclude organization of charters by subsidiaries of direct carriers. Rather, organization by such subsidiaries is the rule rather than the exception. Because of the differences in such concepts and modes of operations, the Board has found that the public interest justifies its disclaiming jurisdiction over foreign tour operators organizing foreign-originating charters. An indication that Congress similarly would not have intended to apply its section 101(36) prohibition, under such circumstances, appears from the fact that the preclusion applies only to the indirect marketing of inclusive tour charters through "a person authorized by the Board to make such sales." Foreign tour operators organizing foreign-originating charters do not fall into this category. We simply can not read into section 101(36) a Congressional intent to preclude an interpretation of the Act which would eliminate unfair competitive practices as between foreign and domestic carriers. (Cf., the International Air Transportation Fair Competitive Practices Act of 1974.)

[18] It has been held that an administrative agency need not conduct a trial-type hearing where its ultimate decision would not be enhanced or assisted by the receipt of additional evidence (see *City of Lafayette* v. *SEC*, 454 F. 2d 941, 953 (1971), aff'd *sub nom. Gulf States Utilities* v. *FPC*, 411 U.S. 747 (1973)), and where there is no dispute on the facts and the proceeding involves only questions of law. (See *Citizens for Allegan County, Inc.* v. *FPC*, 414 F. 2d 1125 (1969)).

[19] By Order 77-3-140, we denied a petition for reconsideration of Order 76-12-101.

with section 408 standards. In Docket 29379, Unitours is seeking similar relief.

We have tentatively decided to deny these petitions because the issues involved in the question of whether tour operators should be permitted to control air carriers, particularly with respect to air carriers marketing U.S.-originating charters, are wholly distinct from the question of whether air carrier should be permitted to acquire control of foreign tour operators organizing foreign-originating tours, under circumstances where foreign laws permit such affiliations and such affiliations are already the common practice. The questions we are deciding here involve only the latter, i.e., U.S. air carriers acquiring foreign tour operators marketing foreign-originating charters and tours. We are expressing no opinion in this proceeding as to the question of U.S. air carriers' acquisition of U.S. tour operators or foreign tour operators organizing U.S. originating charters. Thus, we find no basis to consider the hypothetical question of U.S. tour operators' acquisition of air carriers in connection with this decision.[20]

Accordingly, all interested persons will be given twenty (20) days following the date of service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final.[21] We shall expect such persons to support their objections, if any, with detailed answers specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If further hearing procedures are requested, the objector should state in detail why such procedures are considered necessary and what relevant and material facts he would expect to establish through such procedures that cannot be established in written pleadings. General, vague, or unsupported pleadings will not be entertained.

Accordingly, *it is ordered*, That:

1. All interested persons are hereby directed to show cause why the Board should not issue an order making final its tentative findings and conclusions set forth herein;

2. Any interested persons having objections to the issuance of an order making final any of the proposed findings or conclusions set forth herein shall, within 20 days after the date of service of this order, file with the Board and serve upon all the parties noted in paragraph 8 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; answers to those objections will be due 10 days after the time for objections has expired; [22]

3. If timely and properly supported objections and answers thereto are filed, full consideration will be accorded the matters and issues raised 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. The motions to consolidate of Trans International Airlines, the Airlines Charter Tour Operator Association, and the Pathfinder Corporation be and hereby they are granted to the extent they request consolidation of the dockets which are the subject of this order; and to the extent that they request consolidation of other matters be and they hereby are denied;

6. The various motions for leave to file otherwise unauthorized documents be and they hereby are granted;

7. The various motions for immediate action be and they hereby are granted; and

8. This order shall be published in the FEDERAL REGISTER, and served on all parties of record and the Department of Justice.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-16915 Filed 6-13-77;8:45 am]

[20] Indeed, the issues with respect to U.S. air carrier acquisition of tour operators (noncertificated air carriers) are substantially different than the issues with respect to a tour operator's acquisition of an air carrier. The difference has been recognized by Congress under section 408(a)(5) of the Act where an exemption is permitted with respect to an air carrier acquisition of a "noncertificated air carrier," but no similar exemption is provided for with respect to the acquisition by a noncertificated air carrier (tour operator) of an air carrier.

[21] Answers to the objections will be due ten (10) days after the time for the filing of objections has expired.

[22] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further such motions, requests, or petitions for reconsideration of this order will be entertained.

CIVIL SERVICE COMMISSION

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary, Assistant Secretary for Housing Management.

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

[FR Doc.77-16821 Filed 6-13-77;8:45 am]

DEPARTMENT OF THE ARMY

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Navy to fill by noncareer executive assignment in the excepted service on a temporary basis the position of Deputy Under Secretary of the Navy, Office of the Secretary of the Navy.

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

[FR Doc.77-16818 Filed 6-13-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Environmental Protection Agency to fill by noncareer executive assignment in the excepted service the position of Scientific Policy Advisor and Staff Director, Office of the Science Advisory Board, Office of the Administrator.

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

[FR Doc.77-16819 Filed 6-13-77;8:45 am]

FEDERAL TRADE COMMISSION

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Federal Trade Commission to fill by noncareer executive assignment in the excepted service the position of Secretary of the Federal Trade Commission, Office of the Secretary.

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

[FR Doc.77-16820 Filed 6-13-77;8:45 am]

Grant of Authority To Make a Noncareer Executive Assignment

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Associate Director for Policy, Planning and Research, Office of the Associate Director for Policy, Planning

and Research, Office for Civil Rights, Office of the Secretary.

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

[FR Doc. 77-17079 Filed 6-13-77;11:44 am]

DEPARTMENT OF COMMERCE

Maritime Administration

DETERMINATION OF OPERATING-DIFFERENTIAL SUBSIDIES

Revision to the Manual of General Procedures

In Docket No. 76-28124 appearing in the FEDERAL REGISTER on September 24, 1976 (41 FR 41950) notice was given of proposed revisions to the Manual of General Procedures for Determining Operating-Differential Subsidy (Manual). Interested parties were invited to file written comments on the proposed changes to be made to Part Three (Maintenance and Repair), Part Four (Hull and Machinery Insurance), and Part Five (Protection and Indemnity Insurance) of the Manual. Written comments were received from one party in response to the invitation.

In light of the comments received, certain changes were made to the proposed revisions. Notice is given that the proposed revisions and the changes thereto are adopted. Copies of the revised Parts Three, Four, and Five and related appendices, may be obtained from the Secretary of the Maritime Subsidy Board and the Maritime Administration.

Dated: June 7, 1977.

By order of the Maritime Subsidy Board and Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-16770 Filed 6-13-77;8:45 am]

National Oceanic and Atmospheric Administration

CAPE COD LABIDARY

Receipt of Application for Certificate of Exemption

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

Applicant. Irving F. Briggs, d/b/a Cape Cod Labidary, 4 Circle Drive, Hyannis, Massachusetts 02601.

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

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

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

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

Parts or products exempted. Finished scrimshaw products to be made from approximately 226.72 pounds of whole whale teeth, 12.28 pounds of pieces and cuttings from whale teeth and 607 individual pieces of whale teeth.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before July 14, 1977.

Dated: June 8, 1977.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management.

[FR Doc.77-16908 Filed 6-13-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Navy

RICHARD A. MORIN

Limited Exclusive Patent License Granted

Pursuant to the provisions of Part 746 of Title 32, Code of Federal Regulations (41 FR 55711-55714, December 22, 1976) the Department of the Navy announces that on May 24, 1977, it granted to Richard A. Morin of Bufalo, New York, a revocable, nonassignable, limited exclusive license for a period of five (5) years under United States Patent Number 3,698,591, entitled "Pressure Chamber Closure" issued October 17, 1972, to inventors, Richard A. Marin and Edward H. Lanphier.

Copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice contact:

Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. 202-692-4005.

Dated: June 8, 1977.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc.77-16877 Filed 6-13-77;8:45 am]

WORLD ANTI-POLLUTION MATERIALS CORP.

Limited Exclusive Patent License Granted

Pursuant to the provisions of Part 746 of Title 32, Code of Federal Regulations (41 FR 55711-55714, December 22, 1976), the Department of the Navy announces that on May 3, 1977, it granted to World Anti-Pollution Materials Corporation, a corporation of the State of Oklahoma, a revocable, nonassignable, limited exclusive license for a period of ten (10) years under United States Patent Number 3,717,580, entitled "Method of Disinfecting and Saif-Limiting Solution Therefor," issued February 20, 1973, to inventors, William H. Echols, George H. Fielding and Rex A. Neihof.

Copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, contact:

Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. 202-692-4005.

Dated: June 8, 1977.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc.77-16876 Filed 6-13-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 746-5; OPP-50303]

EXPERIMENTAL USE PERMITS

Notice of Issuance

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 10464-EUP-1. Weyerhaeuser Company, Centralia, Washington 98531. This experimental use permit allows the use of 7,500 pounds of the repellant putrescent egg solids on lodgepole pine to evaluate its use as a deer and elk repellent. A total of 1,600 acres is involved; the program is authorized only in the States of Oregon and Washington. The experimental use permit is effective from May 2, 1977, to May 2, 1978.

No. 1624-EUP-20. U.S. Borax Research Corporation, Anaheim, California 92801. This experimental use permit allows the use of 90 pounds of the herbicide dinitramine on potatoes and sugar beets to evaluate control of various broadleaf weeds and grasses. A total of 153 acres is involved; the program is authorized only in the States of Arizona, California, Colorado, Idaho, Kansas, Maine, Michigan, Minnesota, Montana, Nebraska, New York, North Dakota, Oregon, Texas, Utah, Virginia, Washington, and Wyoming. The experimental use permit is effective from April 28, 1977, to April 28, 1978. This permit is issued with the condition that all treated potatoes and sugar beets will be destroyed or used for research purposes only.

No. 275-EUP-9. Abbott Laboratories, North Chicago, Illinois 60064. This experimental use permit allows the use of the remaining supply of 2,690.5 pounds of the plant regulator 5-Chloro-3-methyl-4-nitro-1H-pyrazole on

oranges to evaluate its use as an abscission agent; this use was authorized in a previous experimental use permit. Approximately 2,500 acres are involved; the program is authorized only in the States of Arizona, California, Florida, and Texas. The experimental use permit is effective from May 3, 1977, to April 30, 1978. A temporary tolerance for residues of the active ingredient in or on oranges has been established.

Interested parties wishing to review the experimental use permits are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., S.W., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*).

Dated: June 6, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-16768 Filed 6-13-77;8:45 am]

[FRL 746-8; PF68]

PESTICIDE AND FOOD ADDITIVE PETITIONS

Filing—Correction

In FR Doc. 77-11500 appearing in the FEDERAL REGISTER of April 20, 1977, on page 20493, errors were made in describing the petition submitted to the Agency for consideration by Elanco Products Co. Because of the length of the notice and the complicated chemical nomenclature used, the entry is reproduced in its entirety below.

Dated: June 7, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

PP7F1925. Elanco Products Co., Div. of Eli Lilly and Co., P.O. Box 1750, Indianapolis IN 46206. Proposes that 40 CFR 180 be amended by establishing tolerances for combined residues of the herbicide tebuthiuron (*N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl]-*N*,*N*'-dimethylurea) and its metabolites *N*-[5-(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl] - *N*,*N*' dimethylurea, *N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl]-*N*-methylurea, *N*-[5-(2-hydroxy-1-dimethylethyl) - 1,3,4 - thiadiazol-2-y]-*N*-methylurea, and *N*-[5-(1,1 dimethylethyl) -1,3,4-thiadiazol-2-yl]-*N*'-hydroxymethyl-*N*-methylurea in or on[1] grasses (pasture and rangeland) and grass hay at 20 parts per million (ppm); tebuthiuron (*N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl]-*N*,*N*'-dimethylurea) and its metabolites[2] 1-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl]-urea, *N*-[5-(1,1-dimethylethyl) -1,3,4-thiadiazol - 2-yl] -*N*'-hydroxymethyl-*N*-methylurea, *N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2 - yl] - *N*-methylurea, 5-(1,1-dimethylethyl)- 2-methylamino-1,3,4-thiadiazol, and 2-(1,1-dimethylethyl)-5-amino - 1,3,4 - thiadiazol in[3] meat, fat and meat byproducts of cattle, goats, horses, and sheep at 2 ppm; tebuthiuron (*N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazo]-2-yl] -*N*,*N*'-dimethylurea) and its metabolites[3] *N*-[5-(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2 - yl] - *N*, *N*'-dimethylurea, *N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl]-*N*-methylurea, 1-[5-(1,1-dimethylethyl)1,3,4 - thiadiazol-2-yl]-urea, and *N*-[5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl] -*N*'-[4]hydroxymethyl-*N*-methylurea in milk at 1 ppm. Proposed analytical method for determining residues is a gas chromatographic procedure using a flame photometric detector. PM 25 (202/426-2632)

[FR Doc.77-16928 Filed 6-13-77;8:45 am]

[1] "on" changed to read "in or on"
[2] Statement "tebuthiuron . . . metabolites" added.
[3] Statement "or on" removed.
[4] Chemical term "*N*'" added.

[FRL 747-1]

SOLID WASTE

Public Meetings

To discuss EPA Grant Regulations for the Implementation of the Resource Conservation and Recovery Act of 1976, P.L. 94-580—June 30, 1977 and To discuss the Draft Guidelines for Public Participation—Section 7004(b) of the Resource Conservation and Recovery Act—July 1, 1977.

EPA's Office of Solid Waste will hold public meetings to discuss two provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) (P.L. 94-580), which was signed into law on October 21, 1976. The first meeting, on June 30, will focus on the grant regulations which allow the EPA to provide financial assistance under the authorities of the applicable provisions within Subtitles C, D, G, and H of the Resource Conservation and Recovery Act. In some instances these proposed regulations are amendments to existing grant regulations of EPA. For Subtitles C and D, these proposed regulations contain new provisions.

Location and time of the public meeting is as follows:

June 30, 1977, U.S. EPA, 401 M Street SW., Room 3906-3908, Waterside Mall, Washington, DC 20460, 9:00 a.m.

The second public meeting will be held July 1, 1977 to discuss the draft guidelines on public participation, required under Section 7004(b) of RCRA. These draft guidelines are a general statement of policy, setting forth objectives in public participation. They describe the provisions required in a minimum public participation program for governmental activity in solid waste management at the Federal and State levels. The proposed guidelines when promulgated will apply to all Federal agencies carrying out activities mandated by RCRA, and to State and local governments and interstate agencies receiving financial assistance under the Act.

Location and time of the public meeting is as follows:

July 1, 1977, U.S. EPA, 401 M Street, SW., Room 2409, Waterside Mall, Washington, DC 20460, 9:00 a.m.

For additional information contact:

Mrs. Geraldine Wyer, Public Participation Officer, Office of Solid Waste, AW-462, U.S. EPA, Washington, DC 20460, Phone: (202) 755-9157.

Dated: June 8, 1977.

Approved:

EDWARD F. TUERK,
Acting Assistant Administrator for Air and Waste Management.

[FR Doc.77-16929 Filed 6-13-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. I-350]

COMMON CARRIER SERVICES INFORMATION

International and Satellite Radio Applications Accepted for Filing

MAY 23, 1977.

By the Chief, Common Carrier Bureau:

The Application listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's Rules, Regulations and its Policies. Final action will not be taken on any of these appliactions earlier than 31 days following the date of this notice. Section 309(d)(1).

FEDERAL COMMUNICATIONS COMMISSION
VINCENT J. MULLINS,
Secretary

SATELLITE COMMUNICATIONS SERVICES

CORRECTION

Report No. I-347 dated 5-16-77 Teleprompter Corporation's application for Great Falls, Montana was listed as KB54 and should have been listed as *KB57* (354-DSE-ML-77).

SSA-9-77 Westport Television, Inc., Kansas City, Missouri. For Special Temporary Authority to operate this receive-only earth station at this location for a period of ninety days, but not to exceed October 6, 1977.

404-DSE-P/L-77 RCA Alaska Communications, Inc., Transportable No. 6. For authority to construct a transportable communications satellite earth station for operation with a domestic communications satellite system with temporary fixed locations within the State of Alaska. Rec. freq: 3700-4200 MHz. Trans. freq: 5925-6425 MHz. Emission 45F9. With a 4.5 meter antenna.

405-DSE-P-77 Dow Jones & Company, Inc., Palo Alto, California. For authority to construct a transmit/receive earth station at this location, and to operate the staion in conjuncion with a space segment leased from Western Union. Lat. 37°24'30". Long. 122°09'06". Rec. freq: 3700–4200 MHz. Trans. freq: 5925–6425 MHz. Emission 1800F9Y. With a 36 foot antenna.

406-DSE-P-77 Dow Jones & Company, Inc., Federal Way, Washington. For authority to construct a transmit/receive earth station at this location and to operate the station in conjunction with a space segment leased from Western Union. Lat. 47°18'11". Long. 122°19'37". Rec. Freq: 3700–4200 MHz. Trans. Freq: 5925–6425 MHz. Emission 1800F9Y. With a 36 foot antenna.

407-DSE-P-77 Dow Jones & Company, Inc., Riverside, California. For authority to construct a transmit/receive earth station at this location and to operate the station in conjunction with a space segment leased from Western Union. Lat. 33°57'28". Long. 117°26'33". Rec. Freq: 3700–4200 MHz. Trans. Freq: 5925–6425 MHz. Emission 1800F9Y. With a 36 foot antenna.

408-DSE-P/L-77 Satellite Networks, Inc., Mequon, Wisconsin. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 43°12'31", Long. 87°55'19". Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 10 meter antenna.

409-DSE-P/L-77 Teleprompter Corporation, Ukiah, California. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 39°08'55", Long. 123°12'18". Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

410-DSE-P/L-77 Teleprompter Corporation, Escanaba, Michigan. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 45°45'40". Long. 87°07'30". Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 4.5 meter antenna.

411-DSE-P/L-77 Kansas State Network, Inc., d/b/a El Reno Cablevision, El Reno, Oklahoma. For authority to construct and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°31'43". Long. 97°56'00". Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 5 meter antenna.

412-DSE-P/L-77 Kansas State Network, Inc., d/b/a Yukon Cablevision, Yukon, Oklahoma. For authority to construct and operate a domestic communications satellite receive-only earth station at this location. Lat. 35°20'27". Long. 97°44'58". Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 5 meter antenna.

413-DSE-P/L-77 McPherson CATV, Incorporated, McPherson, Kansas. For authority to construct and operate a domestic communications satellite receive-only earth station at this location. Lat. 38°21'19". Long. 97°39'58", Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 5 meter antenna.

414-DSE-P-77 El Paso Public Television Foundation, El Paso, Texas. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 31°46'20". Long. 106°30'14". Rec. Freq: 3700–4200 MHz. Emission 36000F9. With a 10 meter antenna.

415-DSE-P-77 Ohio University, Athens Ohio. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 39°19'41". Long 82°06'01". Rec. Freq: 3700–4200 MHz. Emission 36000F9. With a 10 meter antenna.

416-DSE-P-77 University of Southern Colorado, Pueblo, Colorado. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 38°15'46". Long. 104°38'06". Rec. freq: 3700–4200 MHz. Emission 36000F9. With a 10 meter antenna.

418-DSE-P-77 Total TV of Dodge County, Inc., Beaver Dam, Wisconsin. For authority to construct, own and operate a domestic communications satellite receive-only earth station at this location. Lat. 43°27'35". Long. 88°50'08". Rec. freq: 3700–4200 MHz. No emission listed. With a 4.5 meter antenna.

[FR Doc.77-16895 Filed 6-13-77;8:45 am]

[Docket No. 20274; FCC 77-338]

SEA VESSELS

Operational Standards; Fourth Notice of Inquiry

Adopted: May 18, 1977.

Released: June 9, 1977.

By the Commission: Chairman Wiley concurring in the result.

In the matter of intergovernmental maritime consultative organization; preparation of recommended operational standards applicable to equipment mandatorily fitted aboard vessels subject to the Safety of Life at Sea Convention. (40 FR 54867).

1. The Commission is issuing this Notice as a means to inform the public and to obtain comments of interested persons in regard to action by the Intergovernmental Maritime Consultative Organization (IMCO), through its Maritime Safety Committee (MSC) and Subcommittee on Radiocommunications, to develop operational standards applicable to radio equipment mandatorily fitted aboard vessels subject to the Safety of Life at Sea Convention (SOLAS).

2. The Subcommittee on Radiocommunications established a Working Group on Operational Standards which holds its meetings concurrently with scheduled meetings of the subcommittee. The working group is charged with the responsibility of preparing operational standards applicable to radio equipment mandatorily fitted aboard vessels subject to the Safety of Life at Sea Convention. These operational standards, when adopted by the Subcommittee on Radiocommunications and approved by the Maritime Safety Committee, will take the form of recommendations associated with the SOLAS Convention.

3. The Subcommittee on Radiocommunications at its Seventeenth Session, February 21–25, 1977, established the following priority for the operational standards to be prepared by the working group:

a. VHF multiple watch facilities.

b. Sources of energy for radiotelegraphy installations.

c. Sources of energy for radiotelephony installations.

d. Radiotelephone alarm signal generator.

e. Radiotelegraph installations.

f. Radiotelegraph auto alarm installations.

g. Portable radio apparatus for survival craft, including self-supporting antenna.

h. Emergency position indicating radio beacon (EPIRB).

i. Radiotelegraph installations for fitting in lifeboats.

j. Antenna and earth arrangements for the MF and VHF radiotelephone system and the main reserve radiotelegraph system.

4. The appendix to the Third Notice of Inquiry [1] contained draft operational standards for Radiotelephone Watch Receivers, Radiotelephone Auto Alarms and Sources of Electrical Energy. In this regard, the Radiotelephone Watch Receiver standard has been approved by the Subcommittee on Radiocommunications. The Subcommittee, in its consideration of standards for Radiotelephone Auto Alarms, recognized a problem related to the type of signals to which such equipment is required to respond. The Safety Convention does not specifically permit the auto alarm to respond to an emergency position indicating radio beacon signal and/or a navigational warning signal in addition to the radiotelephone alarm signal. The Subcommittee determined that further consideration of this matter of signal responses should be deferred until the 1974 Safety Convention enters into force. Consequently, we anticipate no further effort to be devoted to the preparation of the auto alarm standard during the next several meetings of the Working Group. The Working Group on Operational Standards did not further address the standards for Sources of Energy at the Sixteenth Session due to the press of other technical matters.

5. During the Seventeenth Session of the Subcommittee on Radiocommunications the working group addressed the first four items (a through d) on the list of priorities set out in paragraph 3 as well as standards for VHF Radiotelephone Installations. Draft standards are appended to this Notice for VHF Radiotelephone Installations and Radiotelephone Alarm Signal Generators; draft standards for sources of energy are in the process of being prepared and no substantive changes were made to the draft standard appended to the Third Notice of Inquiry at the Seventeenth Session. Interested parties are requested to provide comments on any one or all of the attached standards. In this regard, comments received will be used to aid the members of the United States Delegation to prepare for the Radiocommunications Subcommittee meeting scheduled for September 1977 in London, England. The Commission is represented on the Delegation and in the Working Group on Operational Standards.

6. In view of the foregoing, a Notice of Inquiry IS HEREBY ADOPTED. Authority for this action is contained in Sections 4(i), 303 and 403 of the Communications Act of 1934, as amended.

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[1] Docket 20274, Notice of Inquiry adopted November 12, 1975, (40 FR 54867).

7. Interested persons may file comments on or before August 4, 1977 and reply comments on or before September 6, 1977. Comments and reply comments shall be filed pursuant to § 1.419(b) which requires, among other things, an original and 5 copies of all filings. All relevant and timely comments and reply comments filed in this Docket will be considered by the Commission before further action is taken. The Commission may also take into account other pertinent information before it in addition to specific comments elicited by the Notice in this proceeding.

8. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,

VINCENT J. MULLINS,
Secretary.

APPENDIX A

ANNEX II.—DRAFT OPERATIONAL STANDARDS FOR VHF RADIOTELEPHONE INSTALLATIONS

1. *Introduction:* The VHF Radiotelephone Installation should, in addition to meeting the requirements of the Radio Regulations, comply with the following operational standards.

2. *General:* 2.1 The installation may consist of more than one equipment which may be capable of operation on single-frequency channels and/or two-frequency channels in one or more of the following categories:

(a) calling, distress and safety; (b) intership; (c) port operation; (d) ship movement; (e) public correspondence.

2.2 The equipment comprises: (a) a transmitter/receiver; (b) an integral and/or one or more separate control units; (c) a microphone with a press-to-transmit switch, the microphone may be combined with a telephone in a handset; (d) an internal or external loudspeaker.

2.3 The installation may also include additional receivers.

3. *Frequency bands and channels:* 3.1 (a) Each equipment designed for operation on single-frequency channels should be capable of simplex operation throughout the band 156.300 MHz to 156.875 MHz.

(b) Each equipment designed for operation on two-frequency channels should be capable of simplex and semi-duplex operation throughout the bands as follows: 156.025 MHz to 157.425 MHz for transmitting and 160.625 MHz to 162.025 MHz for receiving.

In addition, facilities for duplex operation on two-frequency channels are recommended.

3.2 The installation should be capable of transmission and reception on the channels considered by the Administration necessary for the service, but in all cases on the channels 6 and 16.

3.3 Provisions should be made for changing from transmission to reception by use of a press-to-transmit switch. Additionally, facilities for operation on two-frequency channels without manual control may be provided.

3.4 Change of frequency should be capable of being made as rapidly as possible, but in any event within five seconds.

3.5 The time taken to switch from the transmit to the receive conditions, and vice versa, should not exceed 0.3 seconds.

4. *Controls and indicators:* 4.1 All controls should be of such size as to permit normal adjustment to be easily performed. The function and the setting of the controls should be clearly indicated.

4.2 The controls should be illuminated as necessary, so as to enable satisfactory operation of the equipment.

4.3 Means should be provided to reduce to extinction any light output from the equipment which is capable of interfering with safety of navigation.

4.4 An on/off switch should be provided for the entire installation with a visual indication that the installation is switched on.

4.5 The equipment should indicate the channel number, as given in the Radio Regulations, to which it is tuned. It should allow the determination of the channel number under all conditions of external lighting. When practicable, Channel 16 should be distinctively marked.

4.6 The receiver should be provided with a manual volume control by which the audio output may be varied.

4.7 A squelch control should be provided on the exterior of the equipment.

4.8 If the external controls are assembled on a separate control unit and more than one such control unit is provided, the one on the bridge should have priority over the others. When there is more than one control unit, indication should be given to the other(s) that the equipment is in operation.

5. *Permissible warming-up period:* The equipment should be operational within one minute of switching on.

6. *Safety precautions:* 6.1. Means should be provided, as appropirate, for earthing exposed metallic parts of the installation, but this should not cause any terminal of the source of electrical energy to be earthed, unless special precautions, to the satisfaction of the Administration, are taken.

6.2 As far as practicable, accidental access to dangerous voltages within the equipment should be prevented and an appropriate warning notice be affixed.

6.3 The equipment, when operating, should not be damaged by the effects of open-circuited or short-circuited antenna terminals for a period of at least 5 minutes.

7. *Durability and resistance to effects of climate:* The equipment should continue to operate in accordance with the operational standards contained in this recommendation under the conditions of sea state, vibration, humidity and change of temperature likely to be expected on board ships.

8. *Power supply:* 8.1 The equipment should continue to operate in accordance with the operational standards contained in this recommendation in the presence of variations of the power supply likely to be expected on board ships.

8.2 Provision should be made for protecting the equipment from the effects of excessive voltages, transients and reversal of the power supply polarity.

8.3 If provision is made for operating the installation from alternative sources of electrical energy, arrangements for rapidly changing from one source of energy to the other should be incorporated.

9. *Protection against interference:* 9.1 All reasonable and practicable steps should be taken to eliminate the causes of, and to suppress, electromagnetic interference between the installation and other electronic equipment on board.

9.2 No unit of the installation shall be fitted within the minimum safe distance at which they may be mounted from a standard or a steering magnetic compass. These distances should be clearly indicated on the exterior of each unit.

10. *Transmitter output power:* 10.1 The Transmitter output power should be between 6 and 25 watts.

10.2 Provision should be made for reducing the transmitter output power to a value of between 0.1 and 1 watt.

11. *Receiver parameters:* 11.1 The sensitivity of the receiver should be equal to or better than 2 microvolts for a signal-to-noise ratio of 20 dB.

11.2 The selectivity of the receiver should be such that intelligibility of the wanted signal is not seriously affected by unwanted signals.

12. *Loudspeaker and telephone handsets:* 12.1 The receiver output should be suitable for use with a loudspeaker and/or a telephone handset. The audio output should be sufficient to be heard in the ambient noise level likely to be expected on board ships.

12.2 It should be possible to switch off the loudspeaker without affecting the audio output of the telephone handset, if provided.

12.3 In the transmit condition during simplex operation the output of the receiver shall be muted.

12.4 In the transmit condition during duplex operation, only the telephone handset shall be in circuit. Care should be taken to prevent harmful electrical or acoustic feedback, which could cause singing.

13.1 *Miscellaneous:* 13.1 The equipment should be provided with an external indication of manufacture, type and/or number.

13.2 Information should be provided to enable competent members of the ship's staff to operate and maintain the equipment efficiently.

13.3 The internal parts of the equipment should be easily accessible for inspection and maintenance purposes.

APPENDIX B

OPERATIONAL STANDARDS FOR SHIPBORNE RADIO EQUIPMENT

Preliminary draft Operational Standards for Radiotelephone Alarm Signal Generators

1. *Introduction:* The Radiotelephone Alarm Signal Generating Device in addition to meeting the requirements of the Radio Regulations, shall comply with the following operational standards.

2. *Frequency and duration of tones:* 2.1 The frequency of both the 1300Hz and 2200Hz tones shall be maintained within a tolerance of ±1.5 per cent.

2.2 The duration of each tone shall be maintained within a tolerance of ±50 milliseconds.

2.3 The interval between successive tones shall be not greater than 50 milliseconds.

2.4 The ratio of the amplitude of the stronger tone to that of the weaker shall be within the range 1 to 1.2.

3. *Modulation:* The output of the device should be sufficient to modulate adequately the associated transmitter when the alarm signal is applied.

4. *Disconnection:* The device should be capable of being taken out of service at any time in order to permit the immediate transmission of a distress message.

5. *Permissible warming-up period:* It should be possible to generate the Radiotelephone Alarm Signal within (30 seconds) of switching on.

6. *Durability and resistance to effects of climate*—The device should continue to operate in accordance with the operational standards contained in this recommendation under the conditions of sea state, vibration, humidity and change of temperature likely to be expected in a ship.

7. *Aural monitoring*—Provisions should be made to permit aural monitoring of the alarm signal without the generation of radio-frequency energy.

8. *Alarm signal repeat*—After generation of the Radiotelephone Alarm Signal, no delay

should occur before the device is capable of repeating the signal.

9. *Safety precautions*—9.1. As far as practicable, accidental access to dangerous voltages within the device should be prevented and an appropriate warning notice be affixed.

9.2 Means be provided for earthing the case of the device but this should not cause any terminal of the source of electrical energy to be earthed.

10. *Controls*—10.1 All controls should be of such size and form to permit normal adjustments to be easily performed, and should be clearly marked to show their purpose.

10.2 The number of controls available at the exterior of the device should be the minimum necessary for satisfactory and simple operation, and should be arranged such that the possibility of accidental operation is minimized.

11. *Power supply*—11.1 The device should continue to operate in accordance with the operational standards contained in this recommendation in the presence of variations of the power supply likely to be expected in a ship.

11.2. Provision should be made for protecting the device from the effects of excessive voltages, transients and reversal of the power supply.

12. *Miscellaneous*—12.1. The device should be provided with an external indication of manufacture, type and/or number.

12.2 Information should be provided to enable competent members of the ship's staff to operate and maintain the equipment efficiently.

[FR Doc.77-16894 Filed 6-13-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CONFERENCE TO DISCUSS ALTERNATIVE MEANS OF DEVELOPING OIL AND GAS RESERVES DATA FOR THE PETROLEUM PRODUCTION AND RESERVE INFORMATION SYSTEM

Public Panel Discussion

Notice is hereby given that a discussion of the issues related to alternative means by which the FEA can develop comprehensive oil and gas reserves data will be the topic of a panel discussion to be held on July 12, 1977, from 9:00 a.m. to 5:00 p.m. in Conference Room B, Departmental Auditorium, Old Labor Department Building, Constitution Avenue between 12th and 14th Streets NW., Washington, D.C.

Pursuant to the Energy Supply and Environmental Coordination Act of 1974, as amended, and the Energy Conservation and Production Act, FEA has authority and responsibility to obtain and publish oil and gas reserves information. The President in his recent energy message announced the development of a petroleum production and reserves information system. In order to carry out these obligations, FEA is considering alternative means for developing oil and gas reserves data on a continuing basis.

The petroleum production and reserve information system is expected to contain comprehensive oil and gas data which will:

1. Meet the needs of Congress, Federal Agencies, industry, and the general public by providing consistent production and reserves estimates for policy guidance and operational decisions.

2. Minimize duplication and the burden on those supplying the basic data. (Needs of States, Federal Agencies, private industries, and the general public will be considered.)

3. Develop information having an acceptable degree of accuracy through appropriate methodologies.

4. Strike a balance between cost to industry and the government and needs for timeliness, accuracy, and detail.

FEA held a public meeting on May 27, 1976, on reserves information. Following this meeting, FEA asked the Office of Management and Budget (OMB) to head an ad hoc interagency committee to review reserves reporting within the government. OMB held a second public meeting on July 22, 1976, to obtain further input on how such a study might be undertaken. The recommendations of the committee were published by OMB in the March 1977 issue of Statistical Reporter.

This public panel discussion is to address the alternative means being considered by FEA to obtain oil and gas reserves data and to improve the credibility of such data. The alternative means being considered will be made publicly available prior to this discussion. The panel will consist of representatives from the Federal Government, Congress, private industry, and the public. The meeting is open to the public. Any member of the public who wishes to file a written statement with the FEA will be permitted to do so, either before or within 7 days after the meeting. Members of the public who wish to make oral statements should inform Sam O. Wood, Project Manager, Petroleum Production and Reserve Information System, FEA, 12th and Pennsylvania Avenue NW., Room 4440, Washington, D.C. 20461, Phone (202) 566-9364, at least 7 days prior to the meeting.

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 the transcript from the reporter.

Issued at Washington, D.C. on June 8, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc.77-16856 Filed 6-13-77;8:45 am]

STATE ENERGY CONSERVATION PLANS

Negative Determination of Environmental Impact re the New Jersey Energy Conservation Plan

Pursuant to 10 CFR 208.4, the Federal Energy Administration hereby gives notice that it has performed an analysis and review of the environmental impacts associated with the provision of Federal financial assistance for the implementation, by the State of New Jersey, of its State Energy Conservation Plan. Federal funding is authorized by Part C of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*

Based upon assessment of environmental impacts that are expected to result from implementation of this plan, the FEA has determined that Federal financial assistance will not be a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). Therefore, pursuant to 10 C.F.R. 208.4(c), the Federal Energy Administration has determined that an environmental impact statement is not required for this plan.

Single copies of the environmental assessment of the State Plan for New Jersey are available upon request from the FEA Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Copies of the environmental assessment will also be available for public review in the Federal Energy Administration Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Interested persons are invited to submit data, views or arguments with respect to the environmental assessment to Executive Communications, Box NC, Room 3317, Federal Energy Administration, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation, "Environmental Assessment—New Jersey Energy Conservation Plan." Fifteen copies should be submitted. All comments should be received by FEA by 4:30 p.m., e.d.t., June 24, 1977, in order to receive full consideration.

Any information or data considered by the person submitting it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the informaion or data and to treat it according to that determination.

Issued in Washington, D.C., June 9, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

Section 1. *Transfers from the Federal Energy Administration.*

(a)(1) All authority of the Administrator of the Federal Energy Administration under Executive Order 11790 (June 25, 1974)—

(i) Pursuant to Section 2(a) thereof, to exercise authority vested in the President by the Emergency Petroleum Allocation Act of 1973;

(ii) Pursuant to Section 3 thereof, to exercise authority vested in the President under Section 203(a)(3) of the Economic Stabilization Act of 1970, and under Section 4(b) of Executive Order 11748 (December 4,

1973), to the extent such authority remains available under section 218 of that act;

(iii) Pursuant to Section 4 thereof, to exercise the authority vested in the President by the Defense Production Act of 1950, as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government;

(2) The reports required to be submitted by the Administrator of the Federal Energy Administration pursuant to Section 2(b) of Executive Order 11790 shall be submitted by the Secretary.

(b) The authority of the Federal Energy Administration to participate in Federal Regional Councils pursuant to Section 3 of Executive Order 11892 (December 31, 1975), and of the Deputy Administrator of the Federal Energy Administration to participate in the Under Secretaries Group for Regional Operations pursuant to Section 4 thereof, is hereby transferred to the Department of Energy and the Deputy Secretary of Energy, respectively.

(c) The authority of the Administrator of the Federal Energy Administration pursuant to Executive Order 1912 (April 13, 1976), delegating authorities relating to energy policy and conservation, is transferred to the Secretary of Energy, provided that where such order requires consultation with the Administrator of the Energy Research and Development Administration, such requirement is revoked.

(d) The authority of the Administrator of the Federal Energy Administration pursuant to Proclamation No. 3279, as amended, is hereby transferred to the Secretary of the Department of Energy.

Section 4. *Transfers from the Department of the Interior.*

(a)(1) All authority delegated to the Secretary of the Interior to approve, supervise, and direct the activities of the Bonneville Power Administration, is transferred to the Secretary.

(2) All authority delegated to the Secretary of the Interior to approve, supervise, and direct the Bureau of Reclamation with respect to its power marketing functions (including the construction, operation, and maintenance of transmission lines and attendant facilities) is revoked.

(b)(1) All authority of the Department of the Interior pursuant to Executive Order 7510 (December 11, 1936), is transferred to the Secretary, acting by and through the Administrator of the Bonneville Power Administration.

(2)(i) All authority of the Bonneville Power Administration and of the Administrator thereof, pursuant to Executive Order 8526 (August 24, 1946), is transferred to the Secretary, acting by and through the Administrator of the Bonneville Power Administration.

(ii) All authority of the Bureau of Reclamation, and of the Commissioner thereof, pursuant to said Executive Order, and of the Secretary of the Interior pursuant to Section 4 thereof, is transferred to the Secretary.

(3) The authorization granted to employees of the Bureau of Reclamation pursuant to Executive Order 9845 (April 28, 1947), shall apply to employees of the Department of Energy to the extent necessary to facilitate their implementation of functions transferred from the Bureau of Reclamation to the Secretary by Section 302(5) of the DEOA.

(4) The designation of the Bonneville Power Administration as an agency coming within the definition of "Department" for purposes of Title I of the Renegotiation Act of 1951 (Public Law 82-9), pursuant to Executive Order 10299 (October 31, 1951) is transferred to the Bonneville Power Administration within the Department of Energy.

(5) The membership of the Secretary of the Interior in the Defense Mobilization Board, pursuant to Section 102(a) of Executive Order 10480 (August 14, 1953), and his priorities and allocations authority under the Defense Production Act of 1950, pursuant to Section 201(a)(1) thereof, are transferred to the Secretary of the Department of Energy.

(6)(i) The designation of the Administrator of the Bonneville Power Administration as a constituent of the United States Entity under the treaty between the United States and Canada signed January 17, 1961, pursuant to Executive Order 11177 (September 16, 1964), shall apply to the Secretary acting by and through the Administrator of the Bonneville Power Administration.

(ii) The authority of the Secretary of the Interior pursuant to said Executive Order is transferred to the Secretary.

(7) The membership of the Department of the Interior in the Pacific Northwest River Basins Commission pursuant to Executive Order 11331 (March 6, 1967), is transferred to the Secretary of the Department of Energy, acting by and through the Administrator of the Bonneville Power Administration.

(8)(a) The authority of the Secretary of the Interior pursuant to Part 7 of Executive Order 11490 (October 28, 1969), as amended by Executive Order 11921 (June 11, 1976), with respect to electric power, petroleum and gas, solid fuels, and (insofar as it relates to the generation of electric power, drilling for petroleum and gas, and the mining of solid fuels) water, is transferred to the Secretary.

(b) The authority of the Department of the Interior pursuant to Sections [902(6)], 1301(1), 1401(28), and 2701(1), are transferred to the Secretary.

[FR Doc.77-16858 Filed 6-13-77;8:45 am]

APPLICATIONS FOR EXCEPTIONS AND APPEALS

Revised Procedures Concerning Conferences and Hearings

Notice is hereby given that the Office of Exceptions and Appeals of the Federal Energy Administration will be implementing a revised procedure with respect to attendance at the conferences and hearings which it conducts with respect to Applications for Exceptions and Appeals. On the first business day of each week, the Office of Exceptions and Appeals will post a list of any such conference or hearing which it will be conducting during the course of that week together with the time and place of the session. If any additions or changes occur in that schedule those changes will also be pasted. The list will be posted and maintained at the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 2000 M Street, N.W., Washington, D.C. The hearings and conferences that appear on the list will be open to the public. However, in accordance with applicable statutory and regulatory requirements, the persons attending the conference or hearing when proprietary financial or confidential data is discussed may be limited to the party presenting the material.

The procedures specified in this Notice will be effective as of June 13, 1977.

Issued in Washington, D.C., June 8, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc.77-16861 Filed 6-13-77;8:45 am]

FEDERAL MARITIME COMMISSION

[Docket No. 77-23; Agreement No. 10294]

AMERICAN EXPORT LINES, INC., ET AL.

Order of Investigation and Hearing

Agreement No. 10294 among American Export Lines, Inc., Atlantic Container Line (G.I.E.), Dart Containerline Co., Ltd., Hapag-Lloyd AG, Sea-Land Service, Inc., Seatrain International, S. A. and United States Lines, Inc., was filed on April 18, 1977, with the Commission for approval pursuant to section 15 of the Shipping Act, 1916. Additional signers of the agreement subsequent to its filing are Zim American Israel Shipping Co., Inc. on behalf of Zim Container Service, Japan Line, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Kawasaki Kisen Kaisha, Ltd. and Yamashita-Shinnihon Steamship Co., Ltd.

Under the terms of the agreement:

(1) No payment or compensation for the consolidation or deconsolidation of such shipments performed at any place other than a deepsea waterfront facility is to be made.

(2) Application of the agreement is restricted to shipments of mixed commodities by any person from or to United States Atlantic and Gulf ports moving on behalf of multiple shippers.

It attempts to void, nullify, cancel or terminate any provisions of any other agreement previously approved by the Commission in conflict or otherwise inconsistent with this agreement and also lead to the revision of any tariff provisions which would conflict with the purpose of the agreement.

Notice of the filing of Agreement No. 10294 with a request for interested persons to comment thereon was published in the FEDERAL REGISTER and in response to that notice protests were filed by Boston Consolidation Service (BCS), United States Department of Justice (DOJ) and several non-vessel operating common carriers (NVOs). DOJ and the NVOs requested a hearing on the agreement and BCS requested inclusion in any and all matters herein as a party of concerned interest. Additionally, more than 19 customer letters of support on behalf of Yellow Forwarding Company, a non-vessel operating common carrier with tariffs on file at this Commission, were received bearing reference to this agreement and protesting withdrawal of consolidation allowances in general.

Parties to the agreement have requested expedited administrative consideration of the agreement on the grounds that the recent ILA strike was terminated in exchange for the filing of this agreement. Specific justification for the agreement has not been received.

Protestants oppose Agreement No. 10294 on several grounds including: (1)

The agreement is illegal on its face because it *per se* violates the antitrust laws, (2) it would modify approved conference and other agreements by its very terms without any revision of the agreements affected, (3) it conflicts with and serves to contravene previously issued court decisions and orders, (4) it has not been justified to show benefits to be derived by the public, (5) it cannot be disapproved without a hearing pursuant to section 15 of the Shipping Act, 1916, and (6) substantive protests have been lodged requesting a hearing.

Upon consideration of Agreement No. 10294 and the numerous factual and legal issues which surround its implementation and approvability, the Commission has determined that it should be made the subject of an adjudicatory proceeding, and that an investigation and hearing should be instituted to determine, among other things, whether Agreement No. 10294 should be approved, disapproved or modified pursuant to section 15 of the Shipping Act, 1916.

It is therefore ordered, That pursuant to section 15 (46 U.S.C. 814) and section 22 (46 U.S.C. 821) of the Shipping Act, 1916, a proceeding is hereby instituted to determine:

(1) Whether Agreement No. 10294 is a true and complete copy of the understandings or arrangements between the parties;

(2) Whether the parties have in any manner entered into and implemented any agreement or agreements, understandings, and/or arrangements without prior approval, in violation of section 15 of the Act; and

(3) Whether Agreement No. 10294, or agreements, understandings, or arrangements between the parties shall be approved, disapproved, or modified under the provisions of that section.

It is further ordered, That this proceeding be expedited.

It is further ordered, That the carrier signatories listed in Appendix A below, are hereby made Proponents in this proceeding.

It is further ordered, That Boston Consolidation Service, the several non-vessel operating common carriers and the United States Department of Justice listed in Appendix B below, are hereby made Protestants in this proceeding.

It is further ordered, That in accordance with the rules of practice and procedure of this Commission (46 CFR 502.42), Hearing Counsel shall be a party to this proceeding.

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be determined and announced by the Presiding Administrative Law Judge, but no later than December 9, 1977.

It is further ordered, That the hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That this order be published in the FEDERAL REGISTER, and a copy thereof served upon Proponents, and Protestants and as listed in the Appendices hereto.

It is further ordered, That any person(s) other than Proponents, Protestants, and the Bureau of Hearing Counsel having an interest and desiring to participate in this proceeding shall file a petition to intervene pursuant to Rule 72 (46 CFR 502.72) of the Commission's rules of practice and procedure.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 in an original and 15 copies, as well as being mailed directly to all parties of record.

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

APPENDIX A

American Export Lines, Inc.
Atlantic Container Line G.I.E.
Dart Containerline Co., Ltd.
Hapag-Lloyd AG
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
Seatrain International, S.A.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim American Israeli Shipping Co., Inc. on behalf of Zim Container Service

c/o. Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

APPENDIX B

Boston Consolidation Service, Inc., P.O. Box 75, Boston, Massachusetts 02129.

Andrews International, Inc.
C. S. Greene and Company, Inc.
Express Forwarding, Inc.
Imex Trans Corp.
Intermodal Container Service
Lyons Transport, Inc.
Thru Container Corp.
Twin Express, Inc.
Unimodal, Inc.
Yellow Freight International
The Wilson Group
International Container Express
International Association of NVOCC's

c/o Raymond P. de Member, Esquire, Suite 400, Fairfax Circle Bldg., 3251 Old Lee Highway, Fairfax, Virginia 22030.

United States Department of Justice
Regulated Industries Section
Antitrust Division
Department of Justice
Washington, D.C. 20530

[FR Doc.77-16909 Filed 6-13-77;8:45 am]

MARSEILLES NORTH ATLANTIC U.S.A. FREIGHT 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. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and 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 July 5, 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:

John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Agreement No. 5660-23, among the members of the above named Freight Conference, amends the basic organic agreement to provide that (1) final decision on conference matters may be made by telex, cable or telephone poll, and that such decisions shall require the unanimous approval of the members and (2) sets forth new self-policing and cargo inspection procedures.

Dated: June 9, 1977.

By order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-16910 Filed 6-13-77;8:45 am]

SOUTH AND EAST AFRICA/U.S.A. CONFERENCE AND UNITED STATES/SOUTH AND EAST AFRICA CONFERENCE

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. 763, 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, NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and 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 July 5, 1977. Any person 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 agrements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreements Filed by:

William L. Hamm, Chairman, South and East Africa/U.S.A. Conference, United States/South and East Africa Conference, 25 Broadway, New York, New York 10004.

Agreements Nos. 8054–16 and 9502–11 add, respectively, a new Clause 1(d) and a new second paragraph to Clause 2 to the South and East Africa/U.S.A. Conference Agreement and the United States/South and East Africa Conference Agreement to include within the scope of each agreement "rates, charges and practices relating to through movements from and/or to inland points of origin or destination including through and joint rates.", whereby the Conferences may enter into arrangements with other modes of transportation for the establishment of through routes, and through and joint rates applicable thereto. Member lines of each Conference may publish their own intermodal tariffs in the Conference trade until such time as the Conference files its own intermodal tariff covering the same origins, destinations and tariff commodity descriptions with comparable rates, terms and conditions of carriage, and shall at all times be fully subject to the Conferences' self-policing provisions and, if any, statistical reporting requirements.

Dated: June 9, 1977.

By order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-16911 Filed 6-13-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. CS77-560, et al.]

HUBERT K. ELROD, ET AL.

Applications for "Small Producer" Certificates[1]

JUNE 7, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-560	May 23, 1977	Hubert K. Elrod, P.O. Box 292, Guymon, Okla. 73942.
CS77-561	do	Robert E. L. Beebe, P.O. Box 1281 Boulder, Colo. 80306.
CS77-562	do	Union Gas System, Inc., P.O. Box 347, Independence, Kans. 67301.
CS77-563	do	James A. Davidson, P.O. Box 494, Midland, Tex. 79702.
CS77-564	do	N. R. Chico, also DVA, Chix Oil Co., 808 Commerce Bldg., Fort Worth, Tex. 76102.
CS77-565	do	R. Rogers Aston, P.O. Box 1090, Roswell, N. Mex. 88201.
CS77-566	do	Aston Trusts Nos. A and B, Esther Aston Trusts Nos. 1 and 2, P.O. Box 1090, Roswell, N. Mex. 88201.
CS77-567	May 26, 1977	John Weaver, P.O. Box 2226, Roswell, N. Mex. 88201.
CS77-568	do	Cleo Duggar, 1316 West 3d, Roswell, N. Mex. 88201.
CS77-569	do	P.A.R. Petroleum, Inc., Box 280, Liberal, Kans. 67901.
CS77-570	do	Court Pappe, Jr., Box 688, Kingfisher, Okla. 73750.
CS77-571	do	Bryce Duggar, 1316 West 3d, Roswell, N. Mex. 88201.
CS77-572	do	Robert Strand, P.O. Box 2226, Roswell, N. Mex. 88201.
CS77-573	do	H. T. Sowell, Route 1, Box 245-S, Roswell, N. Mex. 88201.
CS77-574	do	Eastern Pennsylvania Exploration Co., 2301 Market St., Philadelphia, Pa. 19101.

[FR Doc.77-16665 Filed 6-13-77;8:45 am]

[RP72-110; PGA77-9]

ALGONQUIN GAS TRANSMISSION CO.

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

JUNE 7, 1977.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas"), on May 25, 1977, tendered for filing Thirty-First Revised Sheet No. 10 to its FPC Gas Tariff, First Revised Volume No. 1.

This sheet is being filed pursuant to Algonquin 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 change proposed to be effective July 1, 1977, is being filed to reflect a change in purchased gas costs filed by its supplier, Texas Eastern Transmission Corporation.

The proposed effective date of the revised tariff sheet is July 1, 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, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-16790 Filed 6-13-77; 8:45 am]

[Docket No. R-389-B]

PLACID OIL CO., ET AL.[1]

Order Denying Application for Rehearing

JUNE 3, 1977.

In January of 1977, pursuant to § 157.29 of the Commission's Rules and Regulations under the Natural Gas Act, Placid Oil Company (Placid) commenced an emergency sale of natural gas to Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) from Block 291, Ship Shoal Area, South Addition, Offshore Louisiana. Placid also transported the gas to Michigan Wisconsin's existing pipeline in Block 207, Ship Shoal Area. Placid reported that it sold the gas for $1.44 per Mcf and charged an additional 4.5 cents per Mcf to transport it approximately 20 miles through its existing 8-inch pipeline. On April 14, 1977, the Commission issued a letter order determining that the .5 cents gathering charge provided for in Opinion No. 770, as amended, was applicable to the service in question, rather than the 4.5 cents designated by Placid as a charge for transportation service. The letter order required, *inter alia*, (1) that Placid immediately reduce the 4.5 cents charge to .5 cents; (2) that it file a report concerning volumes, revenues, and rate components involved; (3) that it refund, within 30 days of the order to Michigan Wisconsin all amounts collected above the .5 cents per Mcf, plus interest at 9% per annum; and (4) that it file a refund report.

On May 5, 1977, Placid filed an application for rehearing of this letter order. Placid argues that the movement of natural gas through its existing pipeline from Block 291 to Block 207 constitutes the transportation of natural gas in interstate commerce within the meaning of Section 7 of the Natural Gas Act, and not "gathering of gas."

Regardless of how the transportation involved is characterized, the applicable producer rates are provided for in Opinion No. 770, as amended. The base rate at the time of the sale was $1.44 per Mcf at 14.73 psia. Section 2.56a(a) of Ordering Paragraph (A), Opinion No. 770-A. Section 2.56a(d) providing for gathering allowances allows .5 cents per Mcf in Southern Louisiana "where the gas is delivered to the buyer at . . . a point on the buyer's pipeline, or an offshore platform on the buyer's pipeline." Section 2.56a(e) provides that if gas produced offshore is delivered onshore, at the sole cost of the producer, one additional cent per Mcf is allowed. Since Placid's gas was not delivered onshore, the maximum allowance provided for by the Regulations is clearly .5 cents.

Placid cites *Order Approving Settlement* in Southern Union Supply Company, Docket Nos. RI76-138 and CI76-578, issued April 20, 1977, as being supportive of its position. There a producer proposed to sell new gas at the wellhead at the national rate. The gas was to be transported in part through a ten mile pipeline owned and operated by an affiliate of the producer. We allowed a transportation charge to the pipeline company where it appeared that such charge would soon be reviewed in a rate case (under Section 4 of the Act) and where it would be subject to prospective modification. Unlike Southern Union which was not selling its gas prior to the issuance of the April 20, 1977 order, Placid commenced service pursuant to Section 157.29 of the Regulations, and consequently Placid was limited to the applicable national rate ceiling for its offshore gas in accordance with Section 157.29 (d).[2]

The Commission finds: Placid's application for rehearing presents no new facts or principles of law which warrant any modification of the April 14, 1977 order.

The Commission orders: Placid's application for rehearing, filed herein May 5, 1977, is hereby denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-16791 Filed 6-13-77; 8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt and Approval of a Proposed Report

A request for clearance of a proposed report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on June 3, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice is to inform the public of such receipt and the action taken by GAO.

FEDERAL ENERGY ADMINISTRATION

The Federal Energy Administration requested special clearance of the proposed form FEA-P131-S-1, Survey of Sellers of No. 2 Heating Oil.

The mandatory one-time form is a revision of the form FEA-P131-S-0, Survey of Sellers of No. 2 Heating Oil, which was accorded a clearance by GAO on 2-16-77 (42 FR 11049). The revision consists of deleting Schedule A (Refiner's form) and questions 3 and 4 from Schedule B of the FEA-P131-S-0.

When FEA decontrolled No. 2 heating oil in July 1976, it committed to Congress to monitor the prices of No. 2 heating oil and set up a trigger mechanism to reinstate controls or take other remedial action should prices nationally or in any one region (Northeast, South, North Central, West) exceed these prices projected as if controls had remained plus a flexibility factor of 2 cents per gallon. The monitoring system took the form of a weekly price index calculated from a survey of 600 heating oil suppliers (form FEA-P112-M-1).

Survey prices exceeded index values for the weeks ending April 9, 16, 23, and 30 for the Nation by 0.1-0.2 cent, in the South by 0.5-0.6 cent, and in the North Central region by 1.1-1.2 cents. The survey price in the Northeast equalled the index value. For the week ending April 2, the survey price in the South exceeded its index value by 0.1 cent.

FEA's index prices also were exceeded in January and March 1977, in the North Central region. The Agency, as promised to Congress, held hearings on this matter in Chicago on April 12 and 14, 1977. The form FEA-P131-S-0 was used in preparation for these hearings. Only 31 companies of a projected universe of 500 were required to file the P131-S-0 (11 refiners, 20 resellers, retailers and reseller/retailers of No. 2 heating oil).

FEA has determined that it is necessary to hold hearings in each of its 10 regions and nationally beginning July 11 and ending July 18, 1977. The purpose of these hearings is to try to determine why heating oil prices exceeded the FEA monitoring system index prices nationwide and what actions may be appropriate for the next heating season. In preparation for the above referenced hearings the FEA needs the information required on the proposed form FEA-P131-S-1 from additional companies.

Respondents to the form FEA-P131-S-1 will be selected from the same universe as that of the form FEA-P131-S-0 excluding all refiners of No. 2 heating oil and those resellers, retailers, reseller/retailers who filed the P131-S-0. The FEA plans to mail the P131-S-1 to as few as 75 or as many as 440 companies. Each firm will be required to file with the FEA within approximately the following two week period. It is estimated that this one-time report will carry a burden of 4 hours per report. Due to the relative similarity of the FEA-P131-S-1 data to that filed on FEA-P112-M-1 and the familiarity of all the firms with FEA regulations in effect, the data required on the FEA-P131-S-1 should be readily available.

If special clearance processing were denied, the normal 45-day clearance process would mean approval of the form on or about July 18, with responses received at FEA approximately two weeks later. This would mean receipt of the data FEA needs to prepare for the regional and national hearings would be approximately two weeks after the close of the hearings.

GAO granted clearance on June 7, 1977, under number B-181254 (S77021). This clearance will expire July 31, 1977.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77-16809 Filed 6-13-77; 8:45 am]

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[1] Placid Oil Company is operator for itself and the following: Hunt Oil Company, Hassie Hunt Exploration Company, Hunt Petroleum Corporation, Hunt Industries, Caroline Hunt Trust Estate and Lamar Hunt Trust Estate, N. B. Hunt, and W. H. Hunt.

[2] See Opinion No. 699-B issued September 7, 1974.

GENERAL SERVICES ADMINISTRATION

[Temporary Reg. E-49]

FEDERAL PROPERTY MANAGEMENT REGULATIONS

Acquisition of Exchange/Sale Automatic Data Processing Equipment (ADPE) Through the ADP Fund

1. *Purpose.* This regulation provides that the ADP Fund may be used to obtain exchange/sale ADPE and systems available through GSA's excess equipment program whenever agencies cannot arrange purchase with their own funds.

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER.

3. *Expiration date.* This temporary regulation expires April 30, 1978, unless sooner revised or superseded.

4. *Applicability.* The provisions of this regulation apply to all Federal agencies as defined in FPMR 101-32.301-2.

5. *Background.* Government-owned ADP equipment is being exchanged or sold out of the Federal Government, while identical and/or functionally compatible equipment is being leased by Federal agencies elsewhere. Allowing the ADP Fund to be used by the agencies will help eliminate these exchanges or sales out of the Government.

6. *Notice of availability of exchange/sale ADPE.* After exchange/sale ADPE is reported, GSA will advertise it in the ADPE Availability List and will also contact Federal agencies leasing (as evidenced by the ADP Management Information System inventory, FMC 74-2) identical and/or functionally compatible equipment to request a determination of the economical advisability of replacement.

7. *Transfer of exchange/sale ADPE.* If a Federal agency determines that replacement is economically advisable and has funds for reimbursement for the exchange/sale equipment, transfer will be accomplished in accordance with FPMR 101-32.3. If funds are not available, the Federal agency may request use of the ADP Fund as provided in paragraph 9.

8. *GSA approval.* The request for use and the conditions of use of the ADP Fund for the acquisition of exchange/sale ADPE must be approved by GSA prior to the transaction.

9. *Conditions for use of the ADP Fund.* a. A Federal agency may seek use of the ADP Fund if it determines that replacement is economically advisable and can certify that:

(1) FMC 74-5, FPMR 101-32.403, and FPMR Temporary Regulation E-42 have been complied with.

(2) The agency does not have funds programed for this purpose nor can it reprogram funds for this purpose.

(3) It cannot divert funds planned for other ADPE procurements with lesser rates of return, if any, for this purpose. (See GSA Bulletin FPMR E-146 for determining rate of return.)

(4) The proposed procument of a new system is consistent with the agency's presently authorized programs, and the need for the ADPE has been concurred in by OMB. (For purposes of this paragraph, a "new system" is defined as any acquisition other than purchase of presently installed ADPE or the purchase for replacement of presently installed ADPE with like equipment.

b. When the procurement action involves purchase of like equipment to replace installed systems, a study shall be made to determine if there is a continued economic justification for in-house ADPE as opposed to alternate sources such as the use of other agency equipment or commercial service bureaus. Agency studies should be consistent with the guidelines of OMB Circular A-76. As required, GSA will forward the agency certification to OMB.

10. *Acquisition of exchange/sale ADPE through the ADP Fund.* In followup to a telephone reservation (See FPMR 101-32.305.) on exchange/sale ADP Fund equipment proposed to be acquired through the ADP Fund, the requesting agency shall submit a letter of intent to the General Services Administration (CDP), Washington, D.C. 20405. This letter shall include the projected period of equipment usage; the requested terms of reimbursement (for example, quarterly reimbursement for 3 years); the agency point-of-contact (with address and telephone number); and the shipping address, instructions, and fund citations for transportation and ADP Fund reimbursement. In addition, there shall be certifications which specify the Federal agency's compliance with the conditions listed in paragraph 9, above.

11. *Effect on other issuances.* This regulation supplements the policies in FPMR 101-32.3, FPMR 101-32.4, and FPR 1-4.11.

12. *Agency comments.* Comments concerning the effect or impact of this regulation on agency operations or programs should be submitted to General Services Administration (CPSB), Washington, D.C. 20405, on or before July 1, 1977.

ROBERT T. GRIFFIN,
Acting Administrator.

JUNE 6, 1977.

[FR Doc.77-16799 Filed 6-13-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77N-0030]

GRAS AND PRIOR-SANCTIONED HUMAN FOOD INGREDIENTS

Availability of Information

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the public availability of new data and information obtained in a review of generally recognized as safe (GRAS) and prior-sanctioned human food ingredients.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In notices published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20054), April 17, 1974 (39 FR 13796), September 23, 1974 (39 FR 34218), August 29, 1975 (40 FR 39916), and January 22, 1976 (41 FR 3331), the Commissioner of Food and Drugs announced the availability of data and information compiled during the safety review of generally recognized as safe (GRAS) and prior-sanctioned food ingredients. The availability of such data and information was announced to provide maximum public opportunity to present additional data, information, and views on the substances while they are being reviewed by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology, (hereinafter referred to as the Select Committee), and to serve as a basis for public comment on proposed Food and Drug Administration (FDA) action on the ingredients.

This notice announces the public availability of additional data and information obtained by the FDA in conducting its safety review of GRAS and prior-sanctioned food ingredients. These data and information consist of 14 scientific literature reviews and 13 reports on mutagenic screening tests. This notice also announces the availability of 12 reports of the Select Committee on the evaluation of health aspects of various food ingredients. The evaluations serve as key sources of data and information for proposed action by FDA on the ingredients.

The Commissioner recognizes that data and information on GRAS and prior-sanctioned food ingredients are of broad public interest. Accordingly, this information is available for public disclosure in the following ways:

1. Copies of each scientific literature review have been placed in the Library of Congress, First St. and Independence Ave., SE., Washington, D.C. 20540, under the title, "Scientific Literature Reviews on GRAS Food Ingredients," L.C. Card No. 73-600105.

2. The Scientific Literature Reviews, reports of mutagenic screening tests, and reports of the Select Committee to the Commissioner of Food and Drugs are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22151. In addition, each mutagenic screening test and report of the Select Committee may be purchased in microfiche form with the ordering numbers listed below at the current cost of $3.00 each. The following documents are available:

Scientific literature reviews

Ingredient(s)	Ordering No.	Cost
Papain	PB-228-540/AS	$4.00
Dextrans	PB-234-889/AS	4.00
Biotin	PB-234-890/AS	4.75
Lard and lard oil	PB-234-891/AS	4.00
Pantothenates	PB-234-892/AS	4.00
Bentonite and clay	PB-234-893/AS	3.75
Caffeine	PB-234-894/AS	8.00
Starter distillate	PB-234-896/AS	4.75
Acrylates	PB-234-897/AS	4.00
Acetic acid	PB-234-898/AS	5.00
Sodium and potassium hydroxides	PB-234-899/AS	3.75
Corn silk	PB-234-900/AS	3.25
Vitamin D	PB-234-901/AS	9.75
Casein	PB-234-902/AS	4.75

Mutagenic screening tests[1]

Ingredient(s)	Ordering No.	Cost
Aluminum ammonium sulfate	PB-254-509/AS	$4.00
Sodium citrate	PB-254-510/AS	4.00
Monopotassium glutamate	PB-254-511/AS	4.00
Monoammonium glutamate	PB-254-512/AS	4.00
Japan wax	PB-254-513/AS	4.00
Sodium acetate	PB-254-514/AS	4.00
Sodium carrageenan	PB-254-515/AS	4.00
Sodium gluconate	PB-254-516/AS	4.00
Sodium fluoride	PB-254-517/AS	4.00
Potassium citrate	PB-254-518/AS	4.00
Succinic acid	PB-254-519/AS	4.00
Sodium aluminum phosphate	PB-254-520/AS	4.00
Potassium acid tartrate	PB-254-521/AS	4.00

[1] Tier I (microbial) testing.

Reports of the select committee

Ingredient(s)	Ordering No.	Cost
Oil of cloves	PB-238-702/AS	$3.25
Sorbose	PB-254-525/AS	3.50
Mustard and oil of mustard	PB-254-528/AS	4.00
Licorice, glycyrrhiza, and ammoniated glycyrrhizin	PB-254-529/AS	4.00
Caprylic acid	PB-254-530/AS	3.50
Stannous chloride	PB-254-531/AS	3.50
Aconitic acid	PB-254-534/AS	3.50
Agar-agar	PB-265-443/AS	3.50
Propylene glycol and propylene glycol monostearate	PB-265-504/AS	3.50
Alginates	PB-265-503/AS	3.50
Red and brown algae	PB-265-505/AS	3.50
Iodine salts	PB-254-533/AS	4.00

A single copy of all data and information given above is available for review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Additional information relating to the review of GRAS substances will be placed on display at this office as it becomes available.

Dated: May 26, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-16637 Filed 6-13-77;8:45 am]

PANEL ON REVIEW OF ANTIMICROBIAL AGENTS AND PANEL ON REVIEW OF MISCELLANEOUS EXTERNAL DRUG PRODUCTS

Joint Meeting; Agenda Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces additional agenda information for the joint meeting of the Panel on Review of Antimicrobial Agents and the Panel on Review of Miscellaneous External Drug Products scheduled for June 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Armond M. Welch, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-4960).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776, (5 U.S.C. App. I)), the Food and Drug Administration (FDA) announced in a notice published in the FEDERAL REGISTER of May 13, 1977 (42 FR 24320), meetings of FDA public advisory committees and other required information in accordance with provisions set forth in section 10(a) (1) and (2) of the act.

Additional information on the joint session to be held on June 25, 1977, in the Hancock Room, Holiday Inn, Chevy Chase, MD, is as follows:

Open public hearing (June 25, 9 a.m. to 10 a.m.): Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make presentations should notify the contact person before June 21 and submit a brief statement of the general nature of the information they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required for their presentation.

Open committee discussion (June 25, 10 a.m. to 4:30 p.m.): The panel has identified a number of subject areas that are of interest in their deliberations and have invited experts in those areas to speak. Subject areas and speakers are as follows:

Source, Production, Chemical Composition and Definition of Coal Tar Used in Drug Products—R. Sherman Detrick.

Coal Tar Carcinogenicity Studies in Animals Relative to Cutaneous Cancer in Humans—Speaker to be named.

Therapeutic Coal Tar and Carcinogenesis—Frederick Urbach, M.D.

Therapeutic and Adverse Effects of Coal Tar in the Management of Seborrhea, Athlete's Foot, Acne, Atopic Dermatitis, Chronic Eczema, and Itching, Burning, and Chafing—Stanley I. Cullen, M.D.

Long-term Experience with Coal Tar—Sigfrid A. Muller, M.D.

Experience in Use of Coal Tar and Coal Tar Gels in Psoriasis Day Care Centers—David L. Cram, M.D.

Data on Coal Tar from the International Task Force on Psoriasis—Eugene M. Farber, M.D.

National Psoriasis Foundation Presentation on Consumer Experience with Medicinal Coal Tar—Beverly W. Foster.

Summary of Dermatological Experience with Coal Tar—Peyton E. Weary, M.D.

General discussion will follow these presentations and also on June 26 from 8:30 a.m. to 12 noon.

Dated: June 8, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-16778 Filed 6-13-77;8:45 am]

[Docket No. 77N-0196]

REVIEW PANEL ON NEW DRUG REGULATION FINAL REPORT

Availability and Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency invites interested persons to submit information and views on recommendations contained in the Final Report of the Review Panel on New Drug Regulation. This request is the result of a DHEW directive to the agency to consult with those outside of the Food and Drug Administration as part of the agency's review of the Panel's report. The comments received will be considered in further policy decisions.

DATES: Comments by August 15, 1977.

ADDRESSES: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Copies of the Final Report may be obtained by writing to the Public Health Service Forms and Publications Distribution Center, 12100 Parklawn Drive, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Bruce Brown, Office of the Executive Secretariat (HF-1), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3900.

SUPPLEMENTARY INFORMATION: In 1975 the Secretary of Health, Education, and Welfare appointed a Review Panel on New Drug Regulation to review current policies and procedures of the Food and Drug Administration (FDA) relating to the approval and disapproval of drugs for marketing in the United States; to evaluate the implementation of these policies and procedures by FDA; to ascertain the nature, extent, and adequacy of public, industry, and professional participation in this review process; and, insofar as the Panel identified any deficiencies, to recommend improvements in the policies and procedures, including changes that might be effectuated through administrative action and those that might require additional legislative authority.

Between November 1976 and May 1977, the Panel submitted to the Secretary 17 interim reports and staff papers

on particiular aspects of FDA regulation. On May 31, 1977, the Panel submitted its Final Report summarizing the findings and recommendations of its 27-month inquiry. The Panel's principal conclusions were:

1. The system of new drug regulation that requires governmental premarket clearance of prescription drugs, based on evidence of safety and effectiveness, is fundamentally sound.

2. FDA is neither pro- nor anti-industry in its review and approval of new drugs.

3. FDA's implementation of the system of new drug regulation needs substantial improvement. The Panel proposed a wide range of legislative, administrative, and procedural reforms to achieve this objective.

Copies of the Final Report, together with the interim and staff reports, have been put on display in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857. Additional copies of these reports are being printed and, when available, may be obtained from the Public Health Service Forms and Publications Distribution Center, 12100 Parklawn Drive, Rockville, MD 20857.

On June 2, 1977, the Secretary asked the Commissioner of Food and Drugs to undertake a thorough and careful review of all recommendations offered by the Panel and to identify the actions that the Commissioner will take to implement those recommendations of the Panel with which he agrees. The Secretary further directed that this "review of the Panel's report and recommendations should be informed by full consultation with public interest groups, consumer organizations, the affected industries and other interested persons." As one aspect of this consultation, the Commissioner invites all interested persons to submit information and views on the Panel's report and specific recommendations contained therein to be considered in reaching final decisions. Because of resource and time limitations, however, the Commissioner does not anticipate that FDA will be able to respond to comments individually. The Commissioner advises that many of the recommendations deal with programs that are already under development within FDA and he believes that it would be contrary to the public interest to delay action on these programs until a complete review of all aspects of the Panel's report and recommendations can be completed. Therefore, FDA may implement, or propose regulations to implement, certain of the recommendations in the near future. The agency will, however, consider any comments received in response to this notice, as well as other information gained during the consultation process, to modify or improve any of the steps taken during the next few weeks.

Persons desiring to submit information and views on the Panel's report and recommendations are particularly requested to organize their responses in the following format:

I. General comments on the report.

II. General comments on the recommendations and the procedures that might be used to effectuate them.

III. Comments on specific recommendations.

A. Recommendation regarding FDA's relations and communications with the pharmaceutical industry.

B. Recommendations regarding FDA's trade secret and Freedom of Information policies.

C. Recommendations regarding adverse drug reaction reporting systems.

D. Recommendations regarding FDA's review of initial IND submissions.

E. Recommendations regarding preclinical and clinical testing guidelines.

F. Recommendations regarding the prescribing of drugs for unapproved uses.

G. Recommendations regarding the science environment of FDA.

H. Recommendations regarding the application of concepts of risk, efficacy, safety, and benefit.

I. Recommendations regarding conflict-of-interest requirements for members of FDA drug advisory committees.

J. Recommendations regarding expansion of FDA's authority in the period following approval of a drug for marketing.

K. Recommendations regarding use of standing drug advisory committees by FDA.

L. Recommendations regarding the effects of the Drug Amendments of 1962 on new drug innovation.

M. Recommendations regarding providing FDA with reliable scientific test data.

N. Recommendations regarding FDA's authority and procedures for the removal of unsafe or ineffective drugs from the market.

Interested persons may, on or before August 15, 1977 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this notice. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 9, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77–16853 Filed 6–9–77;2:03 pm]

Health Services Administration

HEALTH SERVICES FOR BLIND AND DISABLED CHILDREN

Delegations of Authority

Notice is hereby given that the following delegations have been made under Section 1615(b) and (e) of the Social Security Act as amended by Title V of Pub. L. 94–566, authorizing the Secretary of Health, Education, and Welfare to establish criteria for the approval of State plans and to pay States for administering a State plan to provide health and related services to children under age 16 who are eligible under Title XVI of the Social Security Act:

1. Delegation from the Secretary to the Assistant Secretary for Health, with the authority to redelegate, of all authorities vested in the Secretary of Health, Education, and Welfare by Section 1615(b) and (e) of the Social Security Act including the authority to develop regulations but excluding the authority to issue them. This authority is also exclusive of all financial management authorities delegated to the Commissioner of Social Security for the implementation and maintenance of the Supplemental Security Income Program as amended by Pub. L. 94–566. This delegation rescinds the previous delegation of authorities to implement the Supplemental Security Income Program made by the Secretary to the Commissioner of Social Security (38 FR 15648, dated June 14, 1973) only insofar as the previous delegations is applicable to the Secretary's authorities under Section 1615(b) and (e) of the Social Security Act, as amended by Pub. L. 94–566, which are herein delegated to the Assistant Secretary for Health.

2. Delegation from the Assistant Secretary for Health to the Regional Health Administrators, with authority to redelegate, of authority under Section 1615 (b) and (e) of the Social Security Act for payments to States within their respective regions and for approval of State plans based upon guidelines established by the Administrator, Health Services Administration.

3. Delegation from the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of all authorities delegated to the Assistant Secretary for Health under Section 1615(b) and (e) of the Social Security Act except those specifically delegated to the Regional Health Administrators.

The above delegations were effective on May 2, 1977.

Dated: May 31, 1977.

JOHN D. YOUNG,
Assistant Secretary for Management and Budget.

[FR Doc.77–16794 Filed 6–13–77;8:45 am]

National Institutes of Health

NATIONAL DIABETES ADVISORY BOARD SUBCOMMITTEES

Cancellation of Portion of Meeting

Notice is hereby given of the cancellation of the Subcommittees meeting of the National Diabetes Advisory Board, National Institute of Arthritis, Metabolism, and Digestive Diseases, on June 16, 1977, National Institutes of Health, Bethesda, Maryland, Building 31, Rooms 9A–52B, 9A–51 and 2A–51. The Advisory Board meeting on June 17, 1977 will meet 8:30 a.m. to 5:00 p.m. instead of 9:00 a.m., which was published in the FEDERAL

REGISTER on April 29, 1977, 42 FR 21853–54.

Dated: June 9, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc.77-16965 Filed 6-13-77;8:45 am]

Public Health Service

CENTER FOR DISEASE CONTROL

Statement of Organization, Functions, and Delegations of Authority

Part HC, Chapter HC (Center for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (39 FR 1461–68, January 9, 1974, as amended most recently, and in pertinent part, at 40 FR 23919, June 3, 1975, and 41 FR 23993, June 14, 1976) is hereby amended to reflect the following changes:

(1) The title and functional statement for the Office of the Director has been deleted and the functional statement for the Office of the Center Director (HCA) is unchanged; (2) the statement for the Management Analysis Office (HCA56), Office of Administrative Management, has been revised to include additional functions, including coordination of regulations, manpower management, and Privacy Act activities; (3) the Appalachian Laboratory for Occupational Safety and Health (HCC2) has been reorganized into two divisions: the Division of Respiratory Disease Studies (HCCA) and the Division of Safety Research (HCCB); and (4) the Bureau of Epidemiology (HCE) has been reorganized to (a) establish the Alaska Investigations Division (HCEA) to perform certain functions formerly performed in the Office of the Bureau Director, and (b) to change the functional statements and the names of the following divisions: Cancer and Birth Defects Division (HCE3) to the Chronic Diseases Division (HCE3); Parasitic Diseases and Veterinary Public Health Division (HCE6) to the Parasitic Diseases Division (HCE6); and Phoenix Laboratories Division (HCE7) to the Hepatitis Laboratories Division (HCE7). Statements for the Office of the Director (HCE1), Bureau of Epidemiology, and for the Bacterial Diseases Division (HCE2) have been revised to reflect current functions.

Sec. HC–B *Organization and Functions*, is hereby amended, as follows:

1. Delete the title *Office of the Director (HCA)* and the introductory statement "Provides leadership and direction to programs and activities of the Center for Disease Control." The statement for the *Office of the Center Director (HCA)* remains the same.

2. Under the Office of Administrative Management (HCA5), delete the statement for *Management Analysis Office (HCA56)* in its entirety, and substitute the following:

Management Analysis Office (HCA56). (1) Develops, coordinates, implements, and provides advice and assistance to the Office of the Center Director staff and program officials on the Center's administrative policies, standards, and procedures; (2) conducts organization and management improvement studies and surveys, including manpower management and productivity measurement; (3) provides analysis, recommendations, and guidance on the establishment or modification of organizational structure or functions and on delegations of authorities; (4) conducts and coordinates the issuance management system, and controls the Center's distribution of HEW, PHS, and other administrative management issuances; (5) coordinates proposed FEDERAL REGISTER notices, rules, and regulations relating to CDC programs; (6) reviews and interprets directives, develops guidelines, and serves as the focal point for implementation of the Privacy Act of 1974; (7) coordinates and maintains the Freedom of Information Index of CDC Policy Documents and the clearance of Congressional reports required by law; (8) coordinates committee management activities, and conducts physical and personnel security programs; (9) develops, coordinates, and administers other paperwork management programs, including correspondence, forms, records and reports, and word processing.

3. Under the heading NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (HCC), delete the title and statement for *Appalachian Laboratory for Occupational Safety and Health (HCC2)* and substitute the following after *Division of Training and Manpower Development (HCC9)*:

Division of Respiratory Disease Studies (HCCA). (1) Conducts and is the Institute focal point for clinical and epidemiological research on occupational respiratory disease; (2) provides legislatively mandated medical and autopsy services under the Federal Coal Mine Health and Safety Act; (3) conducts medical research to fulfill the Institute's responsibilities under the Federal Coal Mine Health and Safety Act; (4) designs and conducts research programs in agricultural and noncoal mining health; (5) plans, coordinates, and performs energy research relating to occupational safety and health for the Institute, including the areas of synthetic fuel production and occupational hazards associated with solar and other new energy sources.

Division of Safety Research (HCCB). (1) Serves as the focal point for the Institute's occupational safety research program; designs and conducts safety research aimed at preventing or mitigating injury to workers in all industries; (2) conducts accident investigations and provides technical consultations relating to safety problems in all industries; (3) develops criteria for recommended safety standards; (4) develops and evaluates test protocols; and develops regulations for certification of personal protective devices, industrial hazard measuring devices, and quality control programs; (5) tests and certifies personal protective devices and occupation hazard measuring devices.

4. Under the heading BUREAU OF EPIDEMIOLOGY (HCE):

(1) Amend item 3 in the statement for the *Office of the Director (HCE1)* to read as follows: (3) provides epidemiological consultation to other components of the Center, other Federal and State agencies, and international health organizations; delete item (4) and renumber items (5), (6), (7), and (8) to read (4), (5), (6), and (7), respectively.

(2) Delete the statement for the *Bacterial Diseases Division (HCE2)* in its entirety and substitute the following:

Bacterial Diseases Division (HCE2). (1) Conducts surveillance programs, investigations, and special studies of bacterial diseases, including bacterial zoonoses; (2) develops and evaluates methods for prevention and control of these diseases; (3) provides epidemic aid and epidemiological consultation, upon request, to State and local health departments, other Federal agencies, and international health organizations; (4) conducts investigations on the application of biological and physical techniques in disease control, including studies on the relation of the environment to the transmission of diseases, particularly in institutions; (5) provides laboratory and statistical support required for investigations of epidemics, including mobile teams temporarily assigned to field locations.

(3) Delete the title and statement for the *Cancer and Birth Defects Division (HCE3)* in its entirety and substitute the following:

Chronic Diseases Division (HCE3). (1) Develops and maintains systems of case surveillance concerning cancer, birth defects, environmental hazards, diabetes, arthritis, and related chronic diseases, often in cooperation with the National Institutes of Health; (2) conducts epidemiological investigations when indicated in field situations concerning unusual local occurrence of cancer, birth defects, and other chronic diseases; (3) conducts epidemiologic research, often in collaboration with other public health agencies at Federal and State levels, concerning cancer, birth defects, and other chronic diseases; (4) conducts epidemiologic studies of health care delivery with respect to diabetes and other diseases; (5) provides consultation, as requested, within and outside the United States concerning the epidemiology of cancer, birth defects, and other chronic diseases.

(4) Delete the title and statement for the *Parisitic Diseases and Veterinary Public Health Division (HCE6)* in its entirety and substitute the following:

Parasitic Diseases Division (HCE6). (1) Conducts surveillance programs and conducts clinical, field, and laboratory investigations of parasitic diseases, including parsitic zoonoses; (2) provides epidemic aid and epidemiological consultation, upon request, to State and local health departments, other Federal agencies, medical centers, and research institutes in the United States and abroad;

(3) trains health professionals in tropical medicine, parasitology, epidemiology, and public health methods; (4) maintains liaison with the Bureau of Tropical Diseases and the Bureau of Laboratories on interprogram activities relating to malaria evaluations, surveillance, and special investigations of parasitic disease problems; (5) provides antiparasitic chemotherapeutic agents that are unlicensed (under agreement with the Food and Drug Administration) or difficult to obtain in the United States to tropical disease specialists, parasitologists, and other medical specialists.

(5) Delete the title and statement for the *Phoenix Laboratories Division (HCE7)* in its entirety and substitute the following:

Hepatitis Laboratories Division (HCE 7). (1) Conducts clinical, field, and laboratory investigations of selected diseases with primary emphasis on viral hepatitis and dialysis associated diseases; (2) develops and evaluates methods for diagnosis, prevention, and control of these diseases; and conducts a national surveillance program for viral hepatitis; (3) consults, collaborates, and maintains liaison with international, Federal, State, local, and other agencies on technical developments in the field of hepatitis and dialysis associated diseases; (4) provides epidemic aid and other assistance to State and local health departments; (5) serves as a World Health Organization Collaborating Center for Reference and Research on Viral Hepatitis; (6) as a field extension of the Bureau of Epidemiology in the Southwest United States and on the U.S.-Mexico Border, provides contact and furnishes general epidemic aid and other assistance to State and local health departments in this geographic area; (7) furnishes viral hepatitis diagnostic services to State health laboratories.

(6) Insert the following after the functional statement for the *Viral Diseases Division (HCE9):*

Alaska Investigations Division (HCEA). (1) Plans and supervises longitudinal epidemiologic and etiologic investigations of diseases occurring in circumpolar areas, especially among Native peoples; and designs methods for disease control and prevention; (2) conducts field investigations of the epidemiology of infectious, chronic, and environmental diseases of major importance of arctic and subarctic populations; (3) establishes surveillance of selected acute and chronic diseases; and makes recommendations for prevention, control, and/or further epidemiological studies; (4) maintains a central laboratory for performing selected serological, hematological, and bacteriological tests, and a mobile field laboratory to assist with investigations in the field; develops and evaluates logistical and laboratory techniques for conducting prospective investigations and preventive medicine programs in remote northern populations; (5) investigates the prevalence and etiology of genetic and metabolic disease in Alaskan ethnic groups; determines the genetic characteristics of these groups; and provides consultation and specialized biochemical laboratory testing; (6) provides training and consultation in epidemiology.

Dated: May 25, 1977.

JOHN D. YOUNG,
Assistant Secretary for Management and Budget.

[FR Doc.77-16793 Filed 6-13-77;8:45 am]

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Delegation of Authority

Notice is hereby given that the following delegation and redelegation have been made under section 1903(m) of the Social Security Act, as added by section 202 of Pub. L. 94-460. This section describes the requirements for a prepaid or other risk-basis contract between the single State agency under the Medicaid program and a health maintenance organization. Payment of Federal matching funds under the Medicaid program is prohibited in certain instances to any State for services provided by a health maintenance organization under risk-basis contracts unless the Secretary determines that the "health maintenance organization" meets the definition of such term in section 1903(m)(1)(A), which definition is substantially the same as the definition of the term "qualified health maintenance organization" under Title XIII of the Public Health Service Act. In addition, this section further provides for an exception to the otherwise applicable limitation on payments by the Department to a State if the health maintenance organization develops an acceptable 3 year time-phased plan for achieving compliance with the limitation on enrollment of individuals under Titles XVIII and XIX of the Social Security Act (section 1903(m)(2)(A)(iii)) which would reduce the Medicare and Medicaid enrollment to less than 50 percent of the total enrollment.

1. Delegation on January 19, 1977 from the Secretary to the Assistant Secretary for Health, with authority to redelegate, of the authorities vested in the Secretary of Health, Education, and Welfare under section 1903(m)(1)(B) and section 1903(m)(2)(C) of the Social Security Act, as added by Pub. L. 94-460. This delegation was effective on January 19, 1977.

2. Redelegation from the Assistant Secretary for Health to the Director, Office of Quality Standards, of:

a. The authority under section 1903(m)(1)(B) of the Social Security Act, as added by Pub. L. 94-460. This authority was re-delegated on May 6, 1977, effective on this date; and

b. The authority under section 1903(m)(2)(C) of the Social Security Act, as added by Pub. L. 94-460. This authority was re-delegated on January 19, 1977, effective on this date.

Dated: May 24, 1977.

JOHN D. YOUNG,
Assistant Secretary for Management and Budget/OS.

[FR Doc.77-16795 Filed 6-13-77;8:45 am]

Office of the Secretary

"ANALYSIS OF INCENTIVE REIMBURSEMENT SYSTEM FOR HEALTH CARE LONG TERM CARE SERVICES PROVIDED TO ELDERLY AND LONG TERM DISABLED"

Program Results

Pursuant to Section 606 of the Community Services Act of 1974 (Pub. L. 93-644), 42 U.S.C. 2946, this agency announces the results, findings, data, or recommendations reported as a result of activities associated with H.E.W. project entitled, "Analysis of Incentive Reimbursement System for Health Care Long Term Care Services Provided to the Elderly and Long-Term Disabled."

The goal of this project was to develop an incentive reimbursement system for the long-term care industry. This system was to include the following features: (1) it should be prospective in nature, (2) it should explicitly account for the variation in patient mix (and, therefore, the cost of providing care) among the facilities, (3) it should be based on the economic costs of production, (4) it should prevent cost passalongs in the reimbursement mechanism, (5) it should promote economic efficiency in the facility operations via appropriate incentives, (6) it should provide for the provision of quality care, and (7) it should promise cost savings in the Medicaid (and Medicare) program.

The project was divided into two phases: an estimation phase and a simulation phase. The estimation was accomplished by employing analysis of covariance. That is, private-pay patient charges in certified facilities were regressed on a series of independent variables composed of three groups: facility characteristics, local market characteristics, and patient characteristics (including a specially constructed patient debility index). The basic data base used in this phase was the 1973 National Nursing Home Survey. The simulation was conducted in the States of North Carolina and Minnesota. It consisted of applying the formula derived from the estimation of the first phase to each certified facility in the State and then comparing the reimbursement level so simulated with that actually prevailing under the current system. An analysis of winning and losing facilities under the proposed system was undertaken to determine if the gains and losses were justified on economic grounds.

This project had many unique features. One is the debility index developed. Scale Gradient Analysis was used to construct a debility index which required the measurement of only five patient attributes: feeding, continence, movement, dressing, and hygiene. The second special feature was the use of private-pay patient charges as the dependent variable rather than expenses or costs. This avoided the confounding influence of past and present reimbursement systems on the dependent variable, allowed precise measurement of intra-facility variations, and maximized the economic ef-

ficiency considerations inherent in competitively determined market prices. Efforts were made, however (and successfully), to account for pricing above the competitive norm by including market imperfections in the analysis of covariance and eliminating these influences when deriving the reimbursement formula. Finally, in order to conduct the simulation, it was necessary to acquire and edit patient review data and Medicaid cost reports from the two simulation states.

During the estimation, over 60 percent of the variation in private pay charges was explained by a total of only 19 variables, each of which was significant at the .05 level. The reimbursement formula derived from the estimated equation contained only 14 variables. The use of private-pay charges rather than facility expenses did not result in higher program costs. In fact, the main overall report of the formula was to redistribute the reimbursement budget among the participating facilities. In addition, the redistribution appeared to be reasonable in that the winning facilities consistently had high occupancy levels, low administrative costs, and adequate staffing levels, whereas the losing facilities had low occupancy levels, high administrative costs, and low staffing levels. Thus, the formula promotes high occupancy and the shift of resources from administration to direct patient care, which is consistent with considerations of economic efficiency and the maintenance of quality care. The debility mix of facilities was found to be highly variable and significantly related to private charges, although no significant difference was observed between voluntary and proprietary facilities as some have suggested. Finally, the cost of implementing the resulting system does not appear to be large in that existing mechanisms can be used for acquiring practically all of the necessary data.

Dated: June 2, 1977.

HENRY AARON,
Assistant Secretary for Planning and Evaluation.

[FR Doc.77-16905 Filed 6-13-77;8:45 am]

EDITORIAL, COMPOSITION, GRAPHICS, AND TYPING SERVICES FOR PRODUCTION OF A CAMERA READY COPY OF THE STUDY OF RELATIVE MEASURE OF POVERTY REPORT TO CONGRESS

Program Results

Pursuant to Section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the results of activities associated with an HEW Contract entitled, "Editorial, Composition, Graphics, and Typing Services for Production of a Camera Ready Copy of the Study of Relative Measure of Poverty Report to Congress," performed by the National Conference Group, Inc., Falls Church, Virginia, under Contract No. HEW-100-76-0109.

Section 823 of the Education Amendments of 1974, (Pub. L. 93-380) authorized and required the Assistant Secretary for Education of HEW to prepare a study of the measure of poverty used under Title I of the Elementary and Secondary Education Act of 1965. Because of the impact which the findings of the study could have on other Federal programs making use of the official poverty matrix, an interagency Poverty Studies Task Force was established to carry out the study. The report, "The Measure of Poverty", was transmitted to Congress in April 1976. Since that time eighteen technical papers containing essential supporting documentation and analysis for the study have been produced. This series of papers covers a wide variey of subjects pertaining to both conceptual problems and empirical data involved in the measurement of poverty. The contractor edited the rough and final drafts of the papers, physically composed the final draft of each of the papers in order to produce a professionally arranged document, and prepared a final camera-ready copy of each.

Following is a listing of the technical papers along with accession numbers whereby they are identified by the National Technical Information System (NTIS). The reports are available from NTIS at cost, and may be ordered at the following address:

National Technical Information System, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. General Information, 202-724-3509.

Technical Paper II "Administrative and Legislative Uses of the Terms 'Poverty', 'Low-Income', and Other Related Items", Accession Number PB 259-033, $6.00

Technical Paper III "A Review of the Definition and Measurement of Poverty", v.1, Literature Review, Accession Number PB 259-031, $7.75, v.2, Annotated Bibliography, Accession Number PB 259-032, $12.75

Technical Paper V "The Consumer Price Index", Accession Number PB 261-233, $4.00

Technical Paper VII "In-Kind Income and the Measurement of Poverty", Accession Number PB 263-276, $5.00

Technical Paper VIII "The 1972-73 Consumer Expenditure Survey", Accession Number PD 259-034, $4.00

Technical Paper IX "Inventory of Federal Data Bases Related to the Measurement of Poverty", Accession Number PB 260-671, $8.00

Technical Paper X "Effect of Using a Poverty Definition Based on Household Income", Accession Number PB 262-783, $3.50

Technical Paper XII "Food Plans for Poverty Measurement", Accession Number PB 262-784, $6.00

Technical Paper XIII "Relative Poverty" Accession Number PB 262-785, $3.50

Technical Paper XV "Analytic Support for Cost-of-Living Differentials in the Poverty Thresholds", Accession Number PB 261-234, $4.50

Technical Paper XVII "The Sensitivity of the Incidence of Poverty to Different Measures of Income: School-Age Children and Families", Accession Number PB 261-235, $4.50

Technical Paper XVIII "Characteristics of Low-Income Populations Under Alternative Poverty Definitions", Accession Number PB 262-786, $5.50

Papers: I "Documentation of Background Information and Rationale for Current Poverty Matrix"; IV "Bureau of Labor Statistics Family Budgets Program"; VI "Wealth and the Accounting Period in the Measurement of Means"; XI "Update of the Orshansky Index"; XIV "Relative Measure of Poverty"; and XVI "Implications of Alternative Measures of Poverty on Title I of the Elementary and Secondary Education Act", are now in the process of being printed and will be entered into the NTIS system as soon as they are available.

Additional information about this series of technical papers can be obtained from:

Department of Health, Education, and Welfare, 200 Independence Avenue, SW., Room 447-D, South Portal Building, Washington, D.C. 20201.

Dated: June 2, 1977.

HENRY AARON,
Assistant Secretary for Planning and Evaluation.

[FR Doc.77-16904 Filed 6-13-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 17295 (Wash.)]

WASHINGTON

Proposed Classification of Public Lands for Disposal by Exchange; Correction

JUNE 6, 1977.

In FR Doc. 77-12517, appearing on page 22205 in the FEDERAL REGISTER for Monday, May 2, 1977, the fifteenth and sixteenth lines under the heading "Willamette Meridian" should read, "Sec. 18, lots 1, 2, 3, and 4, E½W½, and E½."

E. J. PETERSEN,
Associate State Director.

[FR Doc.77-16878 Filed 6-13-77;8:45 am]

Office of Hearings and Appeals

[Docket No. M 77-125]

BETTY B COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Betty B Coal Co., Box 340, Clintwood, Virginia 24228, has filed a petition to modify the application of 30 CFR 75.-1710, cabs or canopies, to its Mine No. 4, located in Coebyrn, Virginia.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine was opened in 1923. Petitioner has owned and operated the mine for 7 years. The projected life of the mine is 5 years. There has been no recent rehabilitation of the mine. Petitioner has 14 employees and they are not represented by a union.

2. Petitioner's mine is in the Upper Banner Coal Seam. The thickness of the coal seam is from 38 to 44 inches. The average height of the coal seam in locations where equipment, subject to cab and canopy regulations, is being used is 40 inches.

3. Petitioner's equipment consists of: one Lee Norse 265 continuous miner, 10 feet 6 inches long 34 feet 34 inches high.

One AR–4 Elkhorn scoop, 8 feet 10 inches long, 22½ feet 30 inches high.

4. Two hundred and fifty tons are produced per day with one production shift per day. The continuous mining methods used at the mine. The average room size of each working section where equipment is used is 40 inches high, 20 feet wide. The top and floor at each working section where equipment is used is shale to sandstone.

5. The roof is too low to operate equipment with cabs or canopies installed and such an installation may result in a loosening of roof bolt support.

6. The age of Petitoner's equipment is 5 years. Roof bolting and additional timbering are the present roof fall prevention techniques used at the mine. The operator has considered and investigated potential problems related to the use of cabs and canopies. Petitioner plans to use the subject equipment for 5 more years.

7. Petitioner's proposed alternative method consists of roll bars, panic bars and other protective devices. Petitioner will train its employees to use these devices and the roll and panic bar have already been provided.

8. Petitioner's mine is too low to operate the subject equipment with cabs or canopies attached. Such an installation of cabs or canopies would result in a dislodgement of roof bolt support. Equipment operators refuse to operate equipment with cabs or canopies attached.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

[FR Doc.77–16879 Filed 6–13–77;8:45 am]

[Docket No. M77–175]

ENERGY DEVELOPMENT CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Energy Development Co., P.O. Box 36, Hanna, Wyoming 82327, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies, to its Vanguard No. 2 Mine, located in Carbon County, Wyoming.

The substance of Petitioner's statement is as follows:

1. This standard should be declared inapplicable or else waived as it applies to Petitioner's Joy RBD 8 roof bolter because application of the mandatory standard, considering the operative conditions of the mine, will result in a diminution of safety to the miners.

2. The proposed alternative method for operation will at all times guarantee no less than the same measure of protection afforded the miners at the affected mine by the mandatory standard for the following reasons:

(a) The application of the standard to such equipment is unduly restrictive and unnecessary when temporary roof support remains in place until the roof is supported with approved permanent roof support. Installation of the permanent roof support is accomplished in a normal roof bolting cycle, each roof bolt in the row being installed from right to life in sequence. This always places the operator consistently and constantly under permanent roof support, as any other person would normally be out by the last permanent support.

(b) The RBD Joy roof bolter was selected by Petitioner at its Hanna operation because of its unique mobility and gradability. When first selected, it was the only known reliable roof bolter which offered and provided the ability to safely negotiate steep and wet grades, and it is the opinion of the Petitioner that it still is the only machine on the market that is capable of operating under Petitioner's extreme conditions. Other machines including Galis roof bolters have been used but were proven inadequate as far as providing the ability to maneuver in the face conditions existing at Hanna in the deep mines.

(c) Since the Petitioner received the first notice in 1975 on the Joy RBD 8 roof bolter, the Joy Manufacturing Company, in an attempt to aid the Petitioner in complying with the applicable regulations, installed a roof support system on their roof bolter. This consisted of a roof jack which was mounted on the feed frame at the end of the drill boom. Personnel for the Technical Support Center, Denver, Colorado, recently inspected this bolter and concluded the system was not adequate since it required that the jack be repositioned during installation and after each bolt is installed. The use of the support jack places pressure on the roof that when released without permanent support causes a hazardous condition which in turn increases the potential danger to the operator.

(d) The Joy RBD 8 roof bolter has been employed by Petitioner for 2 years at its Vanguard No. 2 Mine without a single disabling injury.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

[FR Doc.77–16880 Filed 6–13–77;8:45 am]

[Docket No. M77–170]

HAWKINS AND SWINEY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Hawkins and Swiney Coal Co., P.O. Box 186, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies, to its Hawkins and Swiney Mine, located in Pike County, Kentucky.

The substance of Petitioner's statement is as follows:

1. Petitioner's haulage equipment consists of several Mescher's Manufacturing Company battery tractors and cars. These tractors range in height from 24 to 32 inches. These tractors were manufactured in the early sixties and were not designed to have canopies installed, as the new type tractors and cars are today.

2. Petitioner operates in the Number 1 Elkhorn Seam. In this seam Petitioner will be constantly running into ascending and descending grades, resulting in dips in the coalbed. By installing canopies on the tractors Petitioner is limiting the vision of the operators of the equipment, creating a hazard to them as well as to other employees in the mine.

3. Petitioner feels that since the tractor operator's vision is limited and because of the position required in order to be seated in the tractor car, the installation of canopies could be a con-

tributing factor to accidents that may arise. Petitioner feels that by having canopies installed on its haulage equipment, it is creating a hazard to the operators.

4. The height of the seam will go 42 to 48 inches.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JUNE 11, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-16881 Filed 6-13-77;8:45 am]

[Docket No. M77-46]

HAWLEY COAL MINING CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Hawley Coal Mining Corp. has filed an amended petition to modify the application of 30 CFR 75.305 to its Blue Boy No. 6 Mine, located in McDowell County, West Virginia.

30 CFR 75.305 provides;

In addition to the preshift and daily examinations required by this Subpart D, examinations for hazardous conditions, including tests for methane, and for compliance with the mandatory health or safety standards, shall be made at least once each week by a certified person designated by the operator in the return of each split of air where it enters the main return, on pillar falls, at seals, in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and insofar as safety considerations permit, abandoned areas. Such weekly examinations need not be made during any week in which the mine is idle for the entire week, except that such examination shall be made before any other miner returns to the mine. The person making such examinations and tests shall place his initials and the date and time at the places examined, and if any hazardous condition is found, such condition shall be reported to the operator promptly. Any hazardous condition shall be corrected immediately. If such condition creates an imminent danger, the operator shall withdraw all persons from the area affected by such condition to a safe area, except those persons referred to in section 104(d) of the Act, until such danger is abated. A record of these examinations, tests, and actions taken shall be recorded in ink or indelible pencil in a book approved by the Secretary kept for such purpose in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazard and the record shall be open for inspection by interested persons.

§ 75.305-1. *Intervals of examination.* Examinations as required by § 75.305 shall be made at least once each week and the phrase "once each week" shall mean at intervals not exceeding 7 days rather than at any time during each calendar week.

§ 75.305-2. *Tests for methane.* Until December 31, 1970, a permissible flame safety lamp may be used to make tests for methane required by the regulations in this part. On and after December 31, 1970, a methane detector approved by the Secretary shall be used for such tests and a permissible flame safety lamp may be used as a supplementary testing device.

The substance of Petitioner's statement is as follows:

1. Petitioner presently engages in the mining of bituminous coal from its Blue Boy No. 6 Mine. The Blue Boy No. 6 Mine was acquired by the Petitioner on or about April 30, 1968, from a prior operator.

2. The Petitioner mines coal from three separate working sections, designated, 3 East, 4 East and 10 Right.

3. Under its present arrangement for the ventilation of the working places in the Blue Boy No. 6 Mine, the Petitioner causes return air from these working places to travel a route, a portion of which passes through abandoned areas in which a prior operator of the Blue Boy No. 6 Mine conducted its mining operations. The return aircourse for this mine passes through approximately 5,800 feet of abandoned areas. This return aircourse has been so used by the Petitioner for a period in excess of 7 years, since November 1, 1969.

4. The Petitioner, as part of the approved ventilation plan for this mine, causes a certified person designated by it to examine the intake aircourse, in its entirety, and that portion of the return aircourse which does not pass through abandoned workings. These examinations are conducted regularly on a weekly basis.

5. Petitioner submits that it has successfully utilized the present return aircourse, for a period in excess of 7 years without, in any way whatsoever, adversely affecting the safety and health of the miners employed by it at its mine.

6. At present there is no other route available to the Petitioner over which it may channel return air, and which may, in its entirety be examined regularly by its certified representative.

7. Petitioner submits that the application of 30 CFR 75.305 insofar as it pertains to the requirement that return aircourses in their entirety be examined, will result in a diminution of safety at the Blue Boy No. 6 Mine in that:

a. the abandoned areas are extensive and a substantial likelihood exists that individuals desginated to examine them may become disoriented and lost therein;

b. a substantial likelihood exists that those designated by the Petitioner to examine these areas will be overcome by accumulations of carbon dioxide, resulting in a condition known as "black damp";

c. the heights within the abandoned areas are extremely low, and inasmuch as transportation through these areas can therefore not be provided, it would be necessary for representatives to crawl through the abandoned areas over a distance of approximately 5,800 feet, thereby physically exhausting them, and significantly increasing the likelihood of injury to them; and

d. there is a substantial likelihood that other hazards to the safety of these individuals may exist, insofar as the physical environs of said abandoned areas are concerned.

8. Petitioner submits that a modification, as herein contemplated, of the standard embodied in 30 CFR 75.305, insofar as it pertains to the requirement that return aircourses be examined in their entirety, will not, if applied to its Blue Boy No. 6 Mine, in any way create any less a degree of safety than is intended to be established by 30 CFR 75.305.

9. As an alternate method to guarantee no less than the same measure of protection to the health and safety of its miners at the Blue Boy No. 6 Mine, as intended by section 75.305, the Petitioner affirms that it shall strictly comply with all aspects of the approved ventilation plan for the Blue Boy No. 6 Mine so as to ensure the safety and health of its miners employed thereat. In addition, the Petitioner shall cause to be taken daily, air velocity readings at the exhaust fan maintained by it at said Mine, and further, shall establish air monitoring stations, at locations indicated on the map submitted as Exhibit A, for the purpose of determining daily, air velocity and methane content at the return entries of each working section in the Blue Boy No. 6 Mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 2, 1977.

[FR Doc.77-16882 Filed 6-13-77;8:45 am]

[Docket No. M 77-179]

JIM WALTER RESOURCES, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Jim Walter Resources, Inc., P.O. Box 10406, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1704, escapeways, to its No. 3 Mine, located in Jefferson County, Alabama.

The substance of Petitioner's statement is as follows:

1. Petitioner is the successor as of January 26, 1976, to the Coal, Iron and Chemicals Division of United States Pipe and Foundry Company, and is the operator of the No. 3 Mine.

2. The No. 3 Mine was first opened in 1973 by sinking three concrete-lined shafts approximately 1,300 feet deep to the Blue Creek coal seam. The Blue Creek seam ranges in thickness from 41 to 78 inches and averages 62 inches in thickness. The cover above the Blue Creek seam ranges from 1,200 to 1,600 feet.

3. At the present time, No. 3 Mine is operating 8 sections, 6 sections on the day shift and 5 sections on the evening and owl shifts and produces approximately 2,000 tons of coal a day.

4. The No. 3 Mine currently employs 508 wage employees, whose collective bargaining representative is the United Mine Workers of America, Local Union No. 1928, whose President is Lewis Johnson, who resides at 806 Delta Street, Bessemer, Alabama 35020.

5. The Petitioners' mining projections include five entries on mains, consisting of two return air entries, a belt entry, a track entry and a intake air entry. Additional entries were not projected and have not been constructed because of roof control problems and mine design limitations due to the extreme depth of the coal, which would create greater hazards for the miners in the mine.

6. Currently working sections 003, 006, 007, and 008 employ approximately 60 miners per shift. These miners are using a route to the 20 foot in diameter by 1,320 foot deep concrete-lined service shaft as the emergency intake air escapeway.

7. The man cage at the concrete-lined service shaft has a capacity of 34 people using the 2½ square foot per man requirement. In an emergency, this capacity could be doubled to 68 persons. This man cage also has the capability to allow an injured man on a stretcher to remain in the prone or supine position.

8. The hoist at the concrete-lined service shaft has a qualified hoisting engineer on duty at all times that persons are underground in order to assure the safe and efficient operation of the hoist.

9. The man cage in this 1,320-foot deep shaft can be raised or lowered from one landing platform to the other in approximately 1.5 minutes.

10. At the present time, the furthest point away from the concrete lined shaft to sections 003, 006, 007 or 008 is approximately 5,000 feet. At a normal pace, a miner could travel this distance by foot in approximately 15 minutes. At a rapid pace, this time could be reduced to 10 minutes.

11. It should also be noted that track haulage is available to within approximately three crosscuts of sections 003 and 006 and extends to within about 100 feet of the concrete-lined service shaft. Although this is not an intake escapeway, it might be possible to use this means for quick transportation in an emergency since it is ventilated with intake air.

12. Management at No. 3 Mine firmly believes that its existing emergency intake escapeway route is the *safest* direct *practical* route to the nearest mine opening *suitable* for the *safe* evacuation of miners.

13. In January of 1977, Teton Drilling Exploration Company completed the raise drilling of a 16 foot in diameter by 1,498 foot deep intake air shaft. This shaft is *unlined* and will remain unlined.

14. MESA had determined that this shaft is "the most direct practical route suitable for the safe evacuation of the miners * * *" and has cited the Petitioner for failure to provide an approved emergency escape facility in the new shaft. A copy of said notice is hereby attached as Petitioner's exhibit "A".

15. The Petitioner alleges that the application of the mandatory standard will result in diminution of safety to miners in the affected areas (sections 003, 006, 007 and 008) of the mine in that:

a. The unlined shaft is affected by the weather and as this shaft weathers in time rocks and dirt will loosen from the sides of the shaft, become dislodged and fall.

b. Further, this shaft cuts across several pockets of ground water which continuously seep out of the sides of the shaft and erode the sides of the shaft and cause rocks and dirt to become dislodged and fall.

c. If a suitable emergency escape facility was available, miners would face the possibility of being trapped inside an emergency man cage due to rock falls from the sides of the shaft.

d. Miners face the possibility of having a rock fall damage the hoisting cable or man cage to the extent that either could break, in which case the cage would fall to the bottom of the 1,498 foot shaft.

e. Due to the construction of emergency man cages, an injured miner on a stretcher would have to be carried onto the man cage and transported in an upright position, thus possibly aggravating his injury.

f. Due to the construction of emergency man cages, the capacity of the cage is usually limited to six miners under the best circumstances.

g. The raise drilled unlined shaft was not designed and constructed as an emergency escape route. The shaft is not symmetrical but is actually "corkscrew" shaped. Further, it is estimated that this shaft is off the vertical by an amount in excess of 5 feet which further reduces the actual usable diameter of the shaft.

h. Due to the unlined nature of the shaft and its off vertical construction, the speed of the man cage would be very limited to prevent swaying and contacting the sides of the shaft and dislodging rocks and dirt and causing it to fall, and to prevent damage to the man cage and any injury to the miners inside.

i. In an emergency there would be a minimum of a few minutes to a maximum of several hours before a qualified engineer and his back up engineer could arrive at the emergency hoist location from the regular mining facilities thus lessening the effectiveness of the emergency system;

j. The emergency man cage would always have to be positioned at the surface and thus the time required to lower the man cage down this 1,498-foot shaft would also lessen the effectiveness of this emergency system.

16. As time is of the essence, and since 30 CFR 75.1704 calls for facilities to allow all persons to escape quickly in the event of any emergency, the purpose of the regulation would be frustrated by requiring the Petitioner to install an emergency escape facility in its new unlined shaft.

17. The Petitioner has investigated emergency escape hoists manufactured by three different companies: Rexnord, Incorporated, Dover Conveyor and Equipment Company and Equipment Corporation of America. At this time, the Petitioner does not know of an emergency hoist that would be both safe and quick to use.

18. From the hoist investigated, to reach the bottom of this unlined shaft 1,498 feet deep would take a round trip time of approximately 10–15 minutes to bring these few miners to the surface, excluding any time taken to mount and dismount the cage. In this same period of time it would be possible for all miners to safely escape at a rapid pace to the concrete-lined service shaft and board the always ready man cage.

19. Furthermore, if miners were to remain in the mine to wait for the emergency hoist to operate instead of proceeding to the service shaft, the extra time spent waiting could result in miners being exposed to more danger.

20. The Petitioner alleges that the alternative method to be developed in lieu of the said mandatory standard will at all times guarantee no less than the same measure of protection afforded the miner at No. 3 by the said mandatory standard.

21. The Petitioner proposes as an alternate method in lieu of the said mandatory standard that:

a. Petitioner will reinstruct all mine personnel on the present emergency escape systems.

b. Petitioner will clearly mark the emergency intake escapeway with a reflective tape at frequent intervals to assure mine personnel that they are traveling in the correct direction in the escapeway.

c. Petitioner will provide emergency materials required by 30 CFR 75.1100–2 (i) at locations not exceeding 5,000 feet from each working section, the first group of such materials to be located in close proximity to sections 003, 006, 007 and 008.

Request for Hearing or Comments

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boule-

vard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

*Exhibit A is available for inspection at the address listed in the last paragraph of this notice.

[FR Doc.77-16883 Filed 6-13-77;8:45 am]

[Docket No. M 77-177]

K & T COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), K & T Coal Co., c/o Allen Tobin, 530 Colliery Avenue, Tower City, Pennsylvania 17880, has filed a petition to modify the application of 30 CFR 75.301, air quality, quantity and velocity, to its No. 3 Slope Mine, located in Tower City, Pennsylvania.

The substance of Petitioner's statement is as follows:

1. It is requested that section 75.301 be modified for this anthracite mine to require, in part, that the minimum quantity of air reaching each working face shall be 1,500 cubic feet a minute, that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries shall be 5,000 cubic feet a minute, and that the minimum quantity of air reaching the intake end of a pillar line shall be 5,000 cubic feet a minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

2. This petition requesting modification of 30 CFR 75.301 is submitted for the following reasons:

(a) Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

(b) Ignition, explosion and mine fire history are nonexistent for the mine.

(c) There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

(d) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(e) Extremely high velocities in small cross sectional areas of airways and manways required is friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

(f) High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

(g) Difficulty in keeping miners on the job and securing additional mine help is due primarily to the conditions cited.

3. Petitioner avers that a decision in its favor will in no way provide less than the same measure of protection afforded the miners under the existing standard.

4. A copy of this petition will be posted at the mine by the operator.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

[FR Doc.77-16884 Filed 6-13-77;8:45 am]

[Docket No. M 77-176]

N.B.C. COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), N.B.C. Coal Co., R.D. #2, Box 328, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301, air quality, quantity and velocity, to its N.B.C. Mine, located in Gowen City, Pennsylvania.

The substance of Petitioner's statement is as follows:

1. Petitioner requests that 75.301 be modified for this anthracite mine to require, in part, that the minimum quantity of air reaching the working face shall be 1,500 cubic feet a minute, that the minimum quantity of air reaching the last open crosscut in any pair of developing entries shall be 5,000 cubic feet a minute, and that the minimum quantity of air reaching the intake end of a pillar line shall be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

2. This petition requesting modification to 30 CFR 75.301 is submitted for the following reasons:

(a) Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine.

(b) Ignition, explosion and mine fire history are nonexistent for this mine.

(c) There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

(d) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(e) Extremely high velocities in small cross sectional areas of airways and manways required in friable anthracite veins for the control purposes particularly in a steeply pitching mine, present a very dangerous flying object hazard to the miners.

(f) High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mine.

(g) Difficulty in keeping miners on the job and securing additional mine help is due primarily to the conditions cited.

3. The Petitioner avers that a decision in its favor will in no way provide less than the measure of protection afforded the miners by the existing standard.

4. A copy of this petition will be posted at the mine by the operator.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

[FR Doc.77-16885 Filed 6-13-77;8:45 am]

[Docket No. M77-171]

THOMAS MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Thomas Mining Company, Isom, Letcher County, Kentucky, has filed a petition to modify the application of 30 CFR 75.7101, cabs or canopies, to its No. 2 Mine, located in Letcher County, Kentucky.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that having canopies installed on its equipment is creating a hazard to the operators.

2. Petitioner's equipment consists of the following: one Elkhorn scoop—height 32 inches and 1 Paul's roof bolter—height 30 inches.

3. The No. 2 Mine is in the Hazard No. 4 Seam which ranges from 50 to 54 inches in height. In this seam Petitioner is constantly running into ascending and descending grades, which result in dips in the coalbed. By installing canopies on the equipment Petitioner is limiting the vision of the operators of this equipment, creating a hazard to them as well as to other employees in the mine. Petitioner feels that since the operators' vision is limited and because of the position required to operate this equipment, installation of canopies could be a contributing factor to accidents that may arise at its mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14,

1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

[FR Doc.77-16886 Filed 6-13-77;8:45 am]

[Docket No. M77-172]

TWO ROSE COAL CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Two Rose Coal Co., Inc., P.O. Box 9, Hellier, Kentucky 41534, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies, to its No. 12 Mine, located in Pike County, Kentucky.

The substance of Petitioner's statement is as follows:

1. Petitioner feels that the installation of the canopies on this equipment is creating a hazard to the equipment operator.

2. Petitioner's haulage equipment consists of two model BM 100 S & S tractors, one S & S model 74 scoop, one 14 BU Joy loading machine and one Wilcox WRDD-J6 roof bolter.

3. The No. 12 Mine is in the Lower Elkhorn seam and ranges from 32 to 48 inches in height. The coal seam has consistent ascending and descending grades creating dips in the coalbed. As a result of these dips, the canopies have to be installed in such a manner as to prevent the canopies from getting against the roof and possibly destroying roof supports. This only allows a 24-inch vertical operating compartment which limits the vision of the equipment operators and creates a hazard to them as well as to the other employees in the mine.

4. Petitioner feel that since the equipment operators' vision is limited and because of the position required in order to be seated in the decks, the installation of the canopies could be a contributing factor in any accidents which may arise.

5. A copy of the petition is being posted at the mine office. The petition had been read and reviewed by the employees at this mine, all employees agree with the petition.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before July 14, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

JUNE 1, 1977.

[FR Doc.77-16887 Filed 6-13-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 3, 1977.

Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for addition time to prepare comments should be submitted by June 24, 1977.

JERRY L. ROGERS,
Chief, Office of Archeology and Historic Preservation.

ALABAMA

Houston County

Dothan, *Dothan Opera House*, 103 N. St. Andrews St.

Madison County

Maysville vicinity, *McCartney Bone House*, 3 mi. NE of Maysville on Herricane Rd.

ALASKA

Anchorage Division

Anchorage vicinity, Beluga Point Site, S of Anchorage.

Fairbanks Division

Fairbanks, *Harding Railroad Car*, Alaskaland.

Kenai-Cook Inlet Division

Port Graham vicinity, *Coal Village Site*, N of Port Graham.

Kodiak Division

Kodiak, *Holy Resurrection Church*, Mission Rd. and Kashevaroff St.

Sitka Division

Sitka, *Emmons House*, 601 Lincoln St. Sitka, Sitka, *Mills, W. P., House*, 1 Maksoutoff St.

CALIFORNIA

Marin County

Bolinas vicinity, *Point Reyes Archeological District*, N of Bolinas.

Mariposa County

Wawona vicinity, *Yosemite Transportation Company Office*, N of Wawona on Yosemite National Park.

Yosemite Village, *Yosemite Valley Acheological District*, Yosemite National Park.

Shasta County

Mineral vicinity, *Sulphur Creek Archeological District*, N of Mineral (also in Tehama County).

DISTRICT OF COLUMBIA

Washington

Rawlins Park, 18th and E Sts., N.W.

GEORGIA

Chatham County

Savannah vicinity, *Wild Heron*, 15 mi. SW of Savannah off U.S. 17.

Floyd County

Rome vicinity, *Berry Schools*, N of Rome.

Fulton County

Atlanta, *Atlanta Waterworks Hemphill Avenue Station*, 1210 Hemphill Ave., N.W.

Atlanta, *Hillyer Trust Building*, 140 Peachtree St.

Jasper County

Monticello, *Jordan-Bellew House*, Madison Highway.

McIntosh County

Crescent, *D'Antignac House.*

IOWA

Black Hawk County

Waterloo, *Christ Church*, 610 E. 4th St.

KENTUCKY

Fayette County

Lexington, *Barton, Abraham, House*, 200 N. Upper St.

Lexington, *Highland Hall*, 6208 Richmond Rd.

Garrard County

Lancaster vicinity, *Nation, Carry A., House*, W of Lancaster on Fisher Ford Rd.

Scott County

Georgetown vicinity, *Miller, John Andrew House*, 3.3 mi. E of Georgetown off U.S. 460.

MASSACHUSETTS

Berkshire County

Pittsfield, *Old Central Fire Station*, 66 Allen St.

Bristol County

New Bedford, *Merrill's Wharf Historic District*, MacArthur Dr.

Taunton, *Church Green*, U.S. 44 and MA 140.

Hampshire County

Hadley, *Hadley Center Historic District*, Middle and Russell Sts.

Middlesex County

Natick, *Natick Center Historic District*, Central St.

Plymouth County

Brockton, *Snow Fountain and Clock*, N. and E. Main Sts.

Worcester County

Holden, *Holden Center Historic District*, Highland St.

MISSISSIPPI

Lowndes County

Columbus vicinity, *Plymouth*, NW of Columbus.

Madison County

Farmhaven vicinity, *Doak's Stand*, E of Farmhaven.

NEW YORK

Albany County

Cohoes, *Harmony Mill Historic District*, between Mohawk River and RR tracks.

SOUTH CAROLINA

Charleston County

Adams Run vicinity, *Grove Plantation*, SW of Adams Run off SC 174.

Florence County

Florence, *U.S. Post Office*, Irby and W. Evan Sts.

Lancaster County

Lancaster, *Lancaster Presbyterian Church*, W. Gay St.

McCormick County

Troy vicinity, *Bradley's Covered Bridge*, 3.2 mi. W of Troy on SC 36.

York County

Rock Hill, *Tillman Hall*, Oakland Ave., Winthrop College campus.
York, *Hart House*, 220 E. Liberty St.

VIRGIN ISLANDS

St. John Island

Cruz Bay vicinity, *American Hill*, NE of Cruz Bay at American Point.
Cruz Bay vicinity, *Caneel Bay Plantation*, NE of Cruz Bay on Cinnamon Bay.
Cruz Bay vicinity, *Cathrineberg–Jockumsdahl–Herman Farm*, E of Cruz Bay.
Cruz Bay vicinity, *Lameshuur Plantation*, E of Cruz Bay on Little Sameshur Bay.

[FR Doc.77–16852 Filed 6–13–77;8:45 am]

Office of the Secretary

OUTER CONTINENTAL SHELF OIL AND GAS

Potential Future Leasing

Comments are hereby requested from States, local jurisdictions, industry, other Federal agencies and all interested parties to assist the Department of the Interior in the preparation of an OCS Planning Schedule for the years 1979, 1980 and 1981. This planning schedule will provide dates for possible OCS sales to be held during that period. A planning schedule for the years 1977–1978 was announced by Secretary Andrus on May 17, 1977.

The OCS planning schedule enables the Federal Government, the States, industry and other interested parties to plan for their involvement in the steps leading up to the consideration of lease sales. A decision on whether to proceed with specific sales will be made only after all the requirements of the OCS Lands Act and the National Environmental Policy Act have been met.

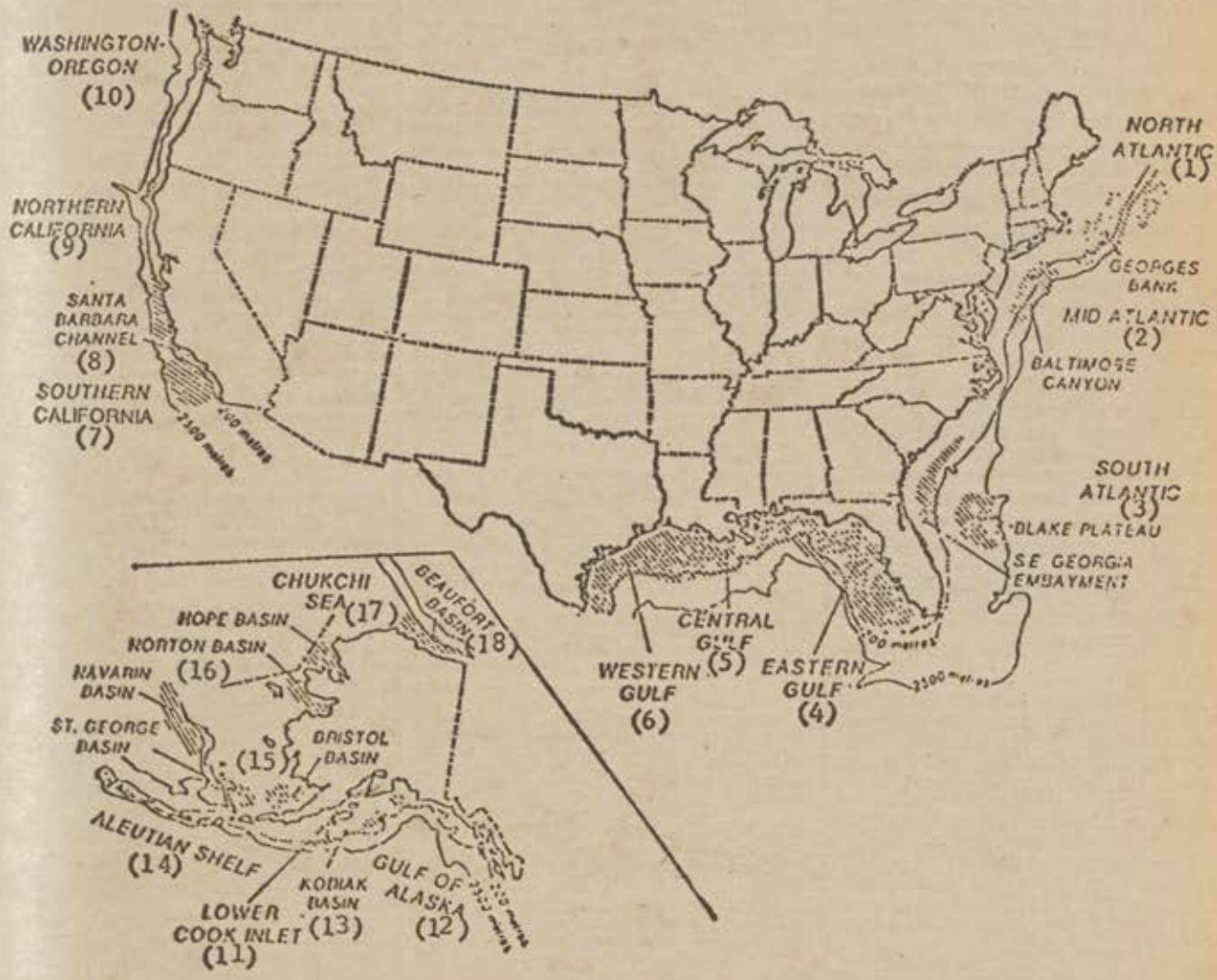
Oil and gas resources of the continental margin, including those beyond the 200 meter depth (656 feet) contour, subject to jurisdiction of the United States are to be considered for possible leasing. Precise continental shelf boundaries between the U.S. and opposite or adjacent nations have not been determined in all cases. Accordingly, certain areas are or may be subject to negotiation or dispute. No decision has been made to undertake leasing in actual or potential disputed areas while efforts are being made to reach agreement with the nations concerned.

The areas to be commented on are as follows:

	Approximate Location [1]
Atlantic Coast OCS areas:	
1. North Atlantic	Gulf of Maine/Georges Bank.
2. Mid-Atlantic	Cape Cod to Cape Hatteras between 40° N. to 35° N. latitude.
3. South Atlantic	Cape Hatteras to Key West south of 35° N. latitude.
Gulf of Mexico OCS areas:	
4. East gulf	East of 88° W. longitude.
5. Central gulf	Between 88° W. to 93° W. longitude.
6. West gulf	West of 93° W. longitude to Mexican border.
Pacific OCS areas:	
7. Southern California Borderland	South of 34° N. latitude to Mexican border (except Santa Barbara channel).
8. Santa Barbara	Santa Barbara channel.
9. North and central California	North of 34° N. latitude to California–Oregon border (except Santa Barbara channel).
10. Washington–Oregon	Between California–Oregon border and Canadian border.
Alaska OCS areas:	
11. Cook Inlet	South of 60° N. latitude.
12. Gulf of Alaska	North of 56° N. latitude, east of 150° W. longitude.
13. Kodiak basin	Between 150° W. and 156° W. longitude.
14. Southern Aleutian shelf	West of 156° W. longitude.
15. Bristol Bay	South of 58° N. latitude, east of 165° W. longitude.
16. Bering Sea shelf	South of 66° N. latitude.
17. Chukchi Sea	U.S. waters north of 66° N. latitude, west of 160° W. Longitude.
18. Beaufort Sea	East of 160° W. longitude.

[1] The Government of the United States is engaging in consulations and negotiations with governments of neighboring countries concerning the delimitation of areas subject to their respective jurisdictions. The Department of State published in the March 7, 1977, FEDERAL REGISTER at page 12937, a Notice of limits pursuant to the Fishery Conservation and Management Act of 1976.

A map of 18 OCS areas under leasing consideration is shown below.



The following information is requested: 1. Identification of possible multiple use conflicts in each area.

2. Identification of areas of critical environmental concern in each area and whether they should be considered as candidates for designation as a marine sanctuary.

3. Amount of planning time needed in each area to accommodate onshore development resulting from offshore activity.

4. Identification of studies which might be needed in each area.

5. Rank by order of oil and gas potential the area of interest listed above.

6. For each area of interest, estimated time periods required to achieve initial and peak production after a discovery is made.

7. Technological feasibility of conducting exploration and development in each area.

The information should be submitted no later than July 15, 1977, in envelopes or packets marked "Request for Comments on Potential Future Outer Continental Shelf Oil and Gas Leasing." The information should be submitted to Director, Office of OCS Program Coordination, Office of Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Room 4160, 18th & C Streets, N.W., Washington, D.C. 20240.

HEATHER L. ROSS,
Deputy Assistant Secretary, Policy, Budget and Administration.

JUNE 7, 1977.

[FR Doc.77-16786 Filed 6-13-77;8:45 am]

Office of the Secretary

PREVENTION OF SIGNIFICANT DETERIORATION IN AIR QUALITY WITHIN UNITS OF THE NATIONAL PARK SYSTEM

Announcement

The National Park Service has concluded that proper consideration should be given immediately to providing extraordinary protection to prevent significant deterioration in air quality within the following units of the National Park System:

Canyonlands National Park, Utah
Capitol Reef National Park, Utah

The Prevention of Significant Air Quality Deterioration Regulations (PSD) of the Environmental Protection Agency (40 CFR § 52.21) provide a mechanism for providing extraordinary protection from deteriorating air quality for land

areas such as parks. In accordance with these regulations [40 CFR § 52.21(d)(5)] it is hereby announced that the Department of the Interior will pursue necessary studies to determine if the above listed parks should be redesignated from PSD Class II to PSD Class I.

Dated: June 7, 1977.

CECIL D. ANDRUS,
Secretary of the Interior.

[FR Doc.77-16951 Filed 6-13-77;8:45 am]

DEPARTMENT OF LABOR

Employment and Training Administration

INDIAN AND NATIVE AMERICAN PROGRAMS

Public Service Jobs Allocations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public that a total of $116,385,000 has been allocated to 100 Indian and Native American prime sponsors for the balance of Fiscal Year 1977 and all of Fiscal Year 1978, under titles II and VI of the Comprehensive Employment and Training Act. The title II funds were allocated pursuant to 29 CFR 96.2. The title VI funds were allocated pursuant to 29 CFR 99.2.

FOR FURTHER INFORMATION CONTACT:

Pierce A. Quinlan, Administrator, Office of Comprehensive Employment Development, U.S. Department of Labor, 6th and D Streets, NW., Washington, D.C. 20213, Telephone 202-376-6254.

	Title	Amount
ALASKA		
Mr. Cecil Barnes, President, North Pacific Rim Native Corp., 433 West 9th Ave., Suite 200, Anchorage, Alaska 99501.	VI	$286,425
Ms. Jeanmarie Larson, Executive Director, Cook Inlet Native Association, 670 West Fireweed La., P.O. Box 515, Anchorage, Alaska 99510.	VI	157,050
Ms. Vera M. Shaflestad, The Aleutian Pribilof Island Association Inc., 430 C St., Suite 303, Anchorage, Alaska.	VI	484,630
Mr. Mark Nicholson, President, Yupiktak Bista, Inc., Box 219, Bethel, Alaska 99559.	VI	5,385,389
Mr. Hector Ewan, President, Copper River Native Association, Drawer G, Copper Center, Alaska 99573.	VI	130,528
Mr. Hjalmar Olson, Executive Director, Bristol Bay Native Association, P.O. Box 179, Dillingham, Alaska.	VI	1,124,098
Mr. Al Ketzler, President, Tanana Chiefs Conference, Inc., Doyon Bldg., First and Hall Sts., Fairbanks, Alaska 99701.	VI	1,571,240
Mr. Ray Paddock, President, Tlingit and Haida Central Council, 130 Seward St., Room 412, Juneau, Alaska 99801.	VI	4,738,899
Mr. George Miller, Jr., President, Tanina Corp., P.O. Box 1210, Kenai, Alaska 99611.	VI	53,402
Mr. Frank R. Peterson, Executive Director, Kodiak Area Native Association, P.O. Box 172, Kodiak, Alaska 99615.	VI	390,313
Mr. Dennis J. Tiepelman, President, Mauneluk Association, Inc., P.O. Box 256, Kotzebue, Alaska 99752.	VI	1,172,812
Mr. Wallace D. Leask, Mayor, Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926.	II	12,492
	VI	167,131
Mr. Byron Mallot, President, Alaskan Federation of Natives, Inc., Human Resources, 550 West 8th Avenue and K, Anchorage, Alaska 99501.	VI	2,481,681
ARIZONA		
Mr. Buck Kitcheyan, Chairman, San Carols Apache Tribe, P.O. Box 0, San Carlos, Ariz. 85550.	II	57,557
	VI	799,880
Mr. Cecil Williams, Chairman, The Papago Tribe of Arizona, P.O. Box 837, Sells, Ariz. 85554.	II	208,725
	VI	2,967,051
Mr. Ronnie Lupe, Chairman, White Mountain Apache Tribe, White River, Ariz. 85941.	II	54,158
	VI	683,204
Mr. Abbott Sekaquaptewa, Chairman, Hopi Tribal Council, Box 128, Oraibi, Ariz. 86039.	II	82,442
	VI	1,196,609
Mr. Alexander Lewis, Sr., Governor, Gila River Indian Community, Box 97, Sacaton, Ariz. 85247.	II	61,906
	VI	903,747
Mr. Peter MacDonald, Chairman, The Navajo Nation, Window Rock, Ariz. 86515.	II	2,086,764
	VI	27,785,612
Ms. Grace McCullah, Executive Director, Indian Development District of Arizona, 1230 East Camelback Rd., Phoenix, Ariz. 85014.	II	32,576
	VI	465,221
Mr. Gerald Anton, President, Salt River Pima-Maricopa Indian Community, Route 1, Box 216, Scottsdale, Ariz. 85256.	II	11,069
	VI	142,052
Mr. Franklin McCabe, Chairman, Colorado River Indian Tribes, Route 1, Box 23-B, Parker, Ariz. 85344.	II	22,296
	VI	325,580
CALIFORNIA		
Mr. Walter J. Lara, Chairman, Inter-Tribal Council of California, 2969 Fulton Ave., Sacramento, Calif. 95821.	II	67,993
	VI	1,001,372
Mr. Banning Taylor, Chairman, California Tribal Chairmen's Association, 2427 Marconi Ave., Suite No. 5, Sacramento, Calif. 95821.	II	58,743
	VI	852,942
COLORADO		
Mr. Robert J. Scott, Acting Director, Colorado Department of Labor and Employment Training Services Section, 770 Grant St., Denver, Colo. 80203.	II	41,429
	IV	603,152
FLORIDA		
Mr. Howard Tommie, Tribal Chairman, Seminole Tribe of Florida, 6073 Stirling Rd., Hollywood, Fla. 33024.	II	13,124
	VI	205,181
Mr. Buffalo Tiger, Chairman, Miccosukee Tribe of Indians of Florida, P.O. Box 44021, Tamiami Station, Miami, Fla. 33144.	II	7,037
	VI	89,973
IDAHO		
Mr. Lonnie Racehorse, Executive Director, Idaho Inter-Tribal Policy Board, Inc., Sonna Bldg., Suite 214, Boise, Idaho 83702.	II	81,119
	VI	1,189,372
Mr. Richard Halfmoon, Chairman, Nez Perce Tribe Manpower Programs, P.O. Box 305, Lapwai, Idaho 83540.	II	12,571
	VI	183,773
KANSAS		
Mr. Charles Morris, Chairman, The United Tribes of Kansas and Southeast Nebraska, Inc., P.O. Box 147, Horton, Kans. 66439.	II	13,519
	VI	163,334
LOUISIANA		
Mr. L. M. Burgess, Chairman of the Board, Indian Manpower Service, Inc., P.O. Box 706, Baton Rouge, La. 70821.	II	2,925
	VI	47,622
MAINE		
Mr. Francis Nicholas, President, Tribal Governor's Inc., 93 Main St., Orono, Maine 04473.	II	17,157
	VI	267,648
MICHIGAN		
Mr. Frederick Dakota, Chairman, Inter-Tribal Council of Michigan, Inc., 405 East Easterday Ave., Sault Ste Marie, Mich. 49783.	II	36,684
	VI	529,946
MINNESOTA		
Mr. Delbert Ellis, Chairman, Minneapolis Regional Native American Center, 1530 East Franklin Ave., Minneapolis, Minn. 55404.	II	8,460
	VI	111,456
Mr. Hartley White, Chairman, Leech Lake Reservation Business Committee, Box 308, Cass Lake, Minn. 56633.	II	41,824
	VI	633,227
Mr. William J. Houle, Chairman, Fond Du Lac Reservation Business Committee, P.O. Box F, Cloquet, Minn. 55720.	II	9,329
	VI	135,106
Mr. Gary Donald, Chairman, Bois Forte Reservation Business Council, P.O. Box 608, Nett Lake, Minn. 55772.	II	13,836
	VI	222,714
Mr. Arthur W. Gahbow, Chairperson, Mille Lacs Reservation Business Committee, Star Route, Onamia, Minn. 56359.	II	11,543
	VI	183,173
Mr. Roger A. Jourdain, Chairman, Red Lake Tribal Council, Red Lake, Minn. 56671.	II	53,446
	VI	795,087
Mr. Darrell Wadena, Chairman, White Earth Reservation Business Committee, Box 274, c/o White Earth CAP, White Earth, Minn. 56591.	II	61,273
	VI	982,765
Mr. William J. Diver, Jr., American Indian Fellowship Association, 2 East 2d St., Duluth, Minn. 55802.	II	2,372
	VI	40,200
MISSISSIPPI		
Mr. Calvin Isaac, Tribal Chairman, Mississippi Band of Choctaw Indians, Tribal Office Bldg., Route 7, Box 21, Philadelphia, Miss. 39350.	II	33,814
	VI	768,830
MONTANA		
Mr. Earl Old Person, Chairman, Blackfeet Tribal Business Council, Blackfeet Indian Reservation, Browning, Mont. 59417.	II	62,770
	VI	933,789
Mr. Patrick Stands Over Bull, Chairman, Crow Indian Tribes, Crow Tribal Council, P.O. Box 371, Crow Agency, Mont. 59022.	II	58,269
	VI	884,938
Mr. John W. Allen, President, Fort Belknap Community Council, Fort Belknap Agency, Harlem, Mont. 59526.	II	13,124
	VI	193,201
Mr. Allen Rowland, Chairman, Northern Cheyenne Tribe, P.O. Box 128, Lame Deer, Mont. 59043.	II	37,478
	VI	526,970
Mr. Norman Hollow, Chairman, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Box 37, Poplar, Mont. 59255.	II	68,468
	VI	1,027,713
Mr. John Windy Boy, Chairman, Chippewa-Cree Tribe, Rocky Boy's Reservation, Rocky Boy Route, Box Elder, Mont. 59521.	II	33,281
	VI	464,773
Mr. Harold W. Mitchell, Jr., Chairman, Confederated Salish and Kootenai Tribes, Flathead Subagency, Dixon, Mont. 59831.	II	43,880
	VI	685,563
NEBRASKA		
Mr. Edward L. Cline, Sr., Chairman, Omaha Tribe of Nebraska, P.O. Box 13, Macy, Nebr. 68039.	II	29,490
	VI	443,443
Mr. Art May, Executive Director, Nebraska Indian Inter-Tribal Development Corp., P.O. Box 682, Winnebago, Nebr. 68071.	II	35,025
	VI	587,589
Mr. Albert J. Thomas, Santee Sioux Tribe of Nebraska, Route No. 2, Santee, Niobrara, Nebr. 68760.	II	7,511
	VI	115,913
NEW MEXICO		
Mr. Delfin J. Lovato, Chairman, All Indian Pueblo Council, P.O. Box 6507, 1015 Indian School Road, NW., Albuquerque, N. Mex. 87107.	II	260,264
	VI	4,124,291
Mr. Edison Laselute, Governor, Pueblo of Zuni, Zuni Tribal Council, Zuni, N. Mex. 87327.	II	65,938
	VI	907,479
Mr. Chavez P. Cobo, President, Ramah Navajo School Board, Inc., P.O. Box 248, Ramah, N. Mex. 87321.	II	28,462
	VI	425,553

	Title	Amount
NEW YORK		
Mr. Calvin Lay, President, Seneca Nation of Indians, Manpower Office, Box No. 344, Salamanca, N.Y. 14779.	II	106,181
	VI	1,668,531
Mr. Mike Bush, Executive Director, American Indian Community House, Inc., 10 East 38th St., New York, N.Y. 10016.	II	6,246
	VI	90,157
Mr. Rudolph Hart, Sr., Head Chief, St. Regis Mohawk Tribe, Hogansburg, N.Y. 13655.	II	29,253
	VI	434,670
NEVADA		
Mr. Larry M. Manning, Chairman, Inter-Tribal Council of Nevada, 1135 Terminal Way, P.O. Box 11367, Reno, Nev. 89502.	II	77,560
	VI	1,044,171
NORTH CAROLINA		
Mr. John A. Crowe, Principal Chief, Eastern Band of Cherokee Indians, P.O. Box 481, Cherokee, N.C. 28719.	II	84,043
	VI	1,227,406
NORTH DAKOTA		
Mr. Edwin J. Henry, Chairman, Turtle Mountain Tribal Council, Turtle Mountain Band of Chippewa Indians, Belcourt, N.Dak. 58316.	II	55,976
	VI	868,972
Mr. Carl McKay, Chairman, Devil's Lake Sioux Tribe, Manpower Programs, Fort Totten, N. Dak. 58335.	II	23,165
	VI	350,628
Mr. Pat McLaughlin, Chairman, Standing Rock Sioux Tribe, Fort Yates, N. Dak. 58538.	II	92,977
	VI	1,340,429
Ms. Rose Crow Flies High, Chairperson, Three Affiliated Tribes, Manpower Program, P.O. Box 597, New Town, N. Dak. 58763.	II	30,281
	VI	400,508
OKLAHOMA		
Mr. James M. Cox, Chairman, Comanche Indian Tribe, Comanche Tribe of Oklahoma, c/o Fort Sill Indian School Bldg. 382, Lawton, Okla. 73501.	VI	463,774
Mr. Edward F. Mouss, Executive Director, Creek Nation, P.O. Box 281, Okmulgee, Okla. 74447.	VI	1,364,479
Mr. Sylvester J. Tinker, Principal Chief, Osage Tribal Council, P.O. Box 897, Pawhuska, Okla. 74056.	II	39,215
	VI	638,192
Mr. Leonard Bigcoose, Chairman, Ponca Tribe of Indians, P.O Box 11, White Eagle, Ponca City, Okla. 74601.	VI	721,831
Mr. Edwin Tanyan, Principal Chief, Seminole National of Oklahoma, 4th and Brown Sts., Wewoka, Okla. 74884.	VI	383,067
Mr. James Wheeler, Chairman, Central Tribe of the Shawnee Area, Inc., 624 North Broadway, P.O. Box 2427, University Station, Shawnee, Okla. 74802.	VI	219,733
Mr. Dana A. Knight, Chairman, North Central Inter-Tribal Council, P.O. Box 68, Red Rock, Okla. 74651.	VI	412,033
Mr. Ross O. Swimmer, Principal Chief, Cherokee Nation of Oklahoma, P.O. Box 119, Tahlequah, Okla. 74464.	VI	1,005,411
Ms. Juanita Learned, Chairperson, Cheyenne-Arapaho Tribes of Oklahoma, P.O. Box 38, Concho, Okla. 73022.	VI	2,178,136
Mr. Overton James, Governor, Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Okla. 74820.	VI	566,656
Mr. David Gardner, Principal Chief, Choctow Nation of Oklahoma, P.O. Box 59, Durant, Okla. 74701.	VI	1,189,172
Mr. Pressley Ware, Chairman, Kiowa Tribe of Oklahoma, P.O. Box 1028, Anadarko, Okla. 73005.	VI	788,003
OREGON		
Mr. Kenneth Smith, General Manager, Warm Springs Consortium, Confererated Tribe of the Warm Springs Reservation of Oregon, Warm Springs, Oreg. 97761.	II	14,468
	VI	209,621
SOUTH DAKOTA		
Mr. Wayne Duchenseaux, Chairman Cheyenne River Sioux Tribe, Eagle Butte, S. Dak. 57615.	II	32,020
	VI	474,578
Mrs. Elnita Rank, Chairwoman, Crow Creek Sioux Tribe, P.O. Box 658, Fort Thompson, S. Dak. 57339.	II	19,766
	VI	304,635
Mr. Richard P. Thompson, Chairman, Lower Brule Sioux Tribe, Lower Brule, S. Dak. 57548.	II	4,111
	VI	67,522
Mr. Al Trimble, President, Oglala Sioux Tribe, Box G, Pine Ridge, S. Dak. 57770.	II	140,968
	VI	2,055,562
Mr. Ed Drivinghawk, Chairman, Rosebud Sioux Tribe, Tribal Office Building, Rosebud, S. Dak. 57570.	II	195,126
	VI	3,051,975
Mr. Gerald Flute, Chairman, Sisseton-Wahpeton Sioux Tribe, 406 Second Ave., East, Sisseton, S Dak. 57262.	II	42,931
	VI	618,504
Mr. Leo O'Connor, Acting Chairman, Yankton Sioux Tribe, Route 3, Wagner, S. Dak. 57380.	II	22,137
	VI	306,878
TEXAS		
Mr. Dempsie Henley, Chairman, Indian Employment Training Service, Inc., Box 206, Livingston, Tex. 77351.	II	16,999
	VI	262,730
UTAH		
Mr. Lester M. Chapoose, Chairman, Ute Indian Tribe, Box 129, Fort Duchesne, Utah 84026.	II	24,588
	VI	376,107
Mr. Regis Clauschee, Chairman of the Board, Utah Native American Consortium, Inc., 120 West 1300 South, Salt Lake City, Utah 84101.	II	158
	VI	2,121
VIRGINIA		
Mr. Maurice Rowe, Chairman, Governor's Manpower Services Council, P.O. Box 1358, Room 107, Richmond, Va. 23211.	II	4,209
	VI	63,650
WASHINGTON		
Ms. Linda E. Day, Executive Director, Northwest Intertribal Council, 2731 10th Ave., Everett, Wash. 98201.	II	87,047
	VI	1,343,813
Mr. Rudolph C. Ryser, Executive Director, Small Tribes Organization of Western Washington, Inc., 530 Pacific Ave., P.O. Box 578, Sumner, Wash. 98390.	II	108,315
	VI	1,583,687
Mr. Mel White, Chairman, Eastern Washington Indian Consortium, Inc., P.O. Box 223, Wellpinet, Wash. 99040.	II	173,305
	VI	2,627,876
Mr. Joseph DeLaCruz, Tribal Chairman, CHE-HO-QUI-SHO, Box 1228, Quinault Reservation, Taholah, Wash. 98587.	II	96,535
	VI	1,500,016
WISCONSIN		
Ms. Shirley Daily, Chairperson, Menominee Restoration Committee, P.O. Box 397, Keshena, Wis. 54135.	II	29,253
	VI	280,843
Mr. Peter Christensen, Executive Director, Great Lakes Inter-Tribal Council, Box 5, Lac Du Flambeau, Wis. 54538.	II	57,082
	VI	744,375
Mr. Rick Baker, Chairman, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Route 2, Hayward, Wis. 54843.	II	25,221
	VI	329,052
Mr. Purcell Powless, Chairman, Oneida Tribe of Indians of Wisconsin, Inc., Route 4, Oneida, Wis. 54155.	II	19,212
	VI	292,019
Mr. Mitchell Whiterabbit, Chairman, Wisconsin Winnebago Business Committee, Old Main Room 041A, University of Wisconsin-Stevens Point, Stevens Point, Wis. 54481.	II	18,501
	VI	276,882
Mr. Leonard E. Miller, Jr., Tribal Chairman, Stockbridge-Munsee Community, Route 1, Bowler, Wisc. 54416.	II	9,804
	VI	153,056
Mr. E. W. Taylor, Chairman, St. Croix Tribal Council, Star Route, Webster, Wis. 54893.	II	15,259
	VI	254,186
WYOMING		
Mr. Arnold Headley, Arapahoe Chairman, Mr. Robert Harris, Shoshone Chairman, Shoshone and Arapahoe Joint Business Council, P.O. Box 217, Fort Washakie, Wyo. 82514.	II	66,729
	VI	950,846

Signed at Washington, D.C., this 9th day of June, 1977.

PIERCE A. QUINLAN,
Administrator, Office of Comprehensive Employment Development.

[FR Doc.77-16935 Filed 6-13-77;8:45 am]

Office of the Secretary

LABOR ADVISORY COMMITTEES FOR MULTILATERAL TRADE NEGOTIATIONS

Renewal

Notice is hereby given of the renewal, after consultation with the Special Representative for Trade Negotiations and the Office of Management and Budget, of the following advisory committees: Labor Policy Advisory Committee for Multilateral Trade Negotiations, and the six Labor Sector Advisory Committees for Multilateral Trade Negotiations on:

I. Electrical and Electronic Equipment and Supplies, and Non-electrical Machinery.

II. Food and Agricultural Products and Chemical, Plastic and Rubber Products.

III. Services.

IV. Textile, Apparel and Leather Products and Miscellaneous Manufacturing Industries.

V. Lumber, Wood and Paper Products, and Stone, Clay and Glass Products.

VI. Transportation Equipment and Primary and Fabricated Metal Products.

The purpose of these committees is to provide advice to the Secretary and the Special Representative for Trade Negotiations in respect to multilateral trade negotiations pursuant to section 135 (c) of the Trade Act of 1974 (Pub. L. 93-618, 19 U.S.C. 2155(c).)

The renewal of such committees is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of June 1977.

HOWARD D. SAMUEL,
Deputy Under Secretary International Affairs.

[FR Doc.77-16933 Filed 6-13-77;8:45 am]

[TA-W-1566]

ATWATER THROWING COMPANY, INC., WILKES-BARRE, PA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of

Labor herein presents the results of TA-W-1566: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 11, 1976 in response to a worker petition received on January 11, 1976 which was filed by the Amalgamated Clothing and Textile Worker's Union on behalf of workers and former workers producing texturized yarn at the Wilkes-Barre, Pennsylvania plants of the Atwater Throwing Company, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER on January 28, 1977 (42 FR 5447). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Atwater Throwing Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation has revealed that criterion (4) has not been met.

The Atwater Throwing Company, Inc., a subsidiary of Burlington Industries, Inc., is engaged in the production of texturized yarn made from continuous man-made fiber. The two Atwater plants in Wilkes-Barre, Pennsylvania were shut down in 1976.

U.S. imports of texturized wholly continuous man-made yarns declined in each year from 1971, when imports totalled 141,783 thousand pounds through 1976, when imports totalled 30,608 thousand pounds.

The ratio of imported texturized wholly continuous man-made yarns to domestic production declined in each year from 1971, the ratio was 14.5 percent, through 1975, when the ratio was 2.0 percent.

U.S. imports of man-made cellulosic yarn (spun rayon and/or acetate) decreased from 412 thousand pounds in 1972 to 95 thousand pounds in 1973, then increased in 1974 to 356 thousand pounds and in 1975 to 973 thousand pounds. Imports decreased to 490 thousand pounds in 1976.

U.S. imports of spun non-cellulosic yarns (acrylic, polyester-modacrylic) increased from 10,126 thousand pounds in 1972 to 14,089 thousand and then decreased to 5,622 pounds in 1974 and to 4,903 thousand pounds in 1975. Imports increased to 8,783 thousand pounds in 1976.

A survey of major customers of the Atwater Throwing Company, Inc., indicated that these customers have not switched to imported texturized yarn. The two customers who purchased other imported man-made yarns increased their purchases from the subject company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with texturized yarn produced by the Wilkes-Barre, Pennsylvania plants of the Atwater Throwing Company, Inc., have not increased as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16937 Filed 6-13-77;8:45 am]

[TA-W-1567]

ATWATER THROWING COMPANY, INC., PLYMOUTH, PA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1567: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 11, 1977 in response to a worker petition received on January 11, 1977 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers producing texturized yarn at the Plymouth, Pennsylvania plant of the Atwater Throwing Co., Inc.

The notice of investigation was published in the FEDERAL REGISTER on January 28, 1977 (42 FR 5448). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the Atwater Throwing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The Department's investigation revealed that criterion (3) has not been met.

The Atwater Throwing Co., Inc., a subsidiary of Burlington Industries, Inc., is engaged in the production of texturized yarn made from continuous man-made fiber.

U.S. imports of texturized wholly continuous made-made yarns declined in each year from 1971, when imports totalled 141,783 thousand pounds, through 1976, when imports totalled 30,608 thousand pounds.

The ratio of imported texturized wholly continuous man-made yarns to domestic production declined each year from 1971, when the ratio was 14.5 percent, through 1975, when the ratio was 2.0 percent.

U.S. imports of made-made cellulosic yarn (spun rayon and/or acetate) decreased from 412 thousand pounds in 1972 to 95 thousand pounds in 1973, then increased in 1974 to 356 thousand pounds and in 1975 to 973 thousand pounds. Imports decreased to 490 thousand pounds in 1976.

U.S. imports of spun non-cellulosic yarns (acrylic, polyester-modacrylic) increased from 10,126 thousands pounds in 1972 to 14,089 thousand and then decreased to 5,622 thousand pounds in 1974 and to 4,903 thousand pounds in 1975. Imports increased to 8,783 thousand pounds in 1976.

A survey of major customers of the Atwater Throwing Company, Inc., indicated that these customers have not switched to imported texturized yarn. The two customers who purchased other imported man-made yarns increased their purchases from the subject company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with texturized yarn produced by the Plymouth, Pennsylvania plant of the Atwater Throwing Co., Inc., have not increased as required by Section 222(3) of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16938 Filed 6-13-77;8:45 am]

[TA-W-1925]

C. BREWER AND CO., LTD., HONOLULU, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1925: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 30, 1977 in response to a worker petition received on March 25, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers engaged in employment related to the production of cane sugar and raw sugar at C. Brewer and Company, Honolulu, Hawaii.

The notice of investigation was published in the FEDERAL REGISTER on April 12, 1977 (42 FR 19178). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 223 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment at C. Brewer and Company, Limited, and the Hawaiian Sugar Company declined 3.5 percent from 1975 to 1976, and declined 4.5 percent in the fourth quarter of 1976 compared to the same period in 1975, and declined 17.2 percent in the first quarter of 1977 compared to the first quarter of 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of C. Brewer and Company, Limited, are reflected in the sales of the sugar companies for which administrative and technical services are provided.

Sales of Ka'u Sugar Company declined 32.0 percent from 1975 to 1976, and declined 46.2 percent in the first quarter of 1977 compared to the same period in 1976.

Sales of Mauna Kea Sugar Company declined 38.5 percent from 1975 to 1976, and declined 7.5 percent in the first quarter of 1977 compared to the same period in 1976.

Sales of Wailuku Sugar Company declined 38.4 percent from 1975 to 1976, and declined 13.6 percent in the first quarter of 1977 compared to the same period in 1976.

Sales of Olokele Sugar Company declined 36 percent from 1975 to 1976, and declined 29 percent in the first quarter of 1977 compared to the first quarter of 1976.

INCREASED IMPORTS

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

CONTRIBUTED IMPORTANTLY

C. Brewer and Company, Limited, is integral to the operations of the sugar growing and processing companies, providing technical and administrative support. Import injury to the sugar companies affects employees engaged in administrative and technical employment related to growing and processing cane sugar.

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the price explosion in 1974 when prices rose to 57.3 cents per pound to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production.

This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from C. Brewer and Company, Limited. In addition there exists a threat of further declines in sales and further separations of workers due to expectations of continued pressure from imports of sugar.

The C and H Sugar Refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at C. Brewer and Company, Limited, contributed importantly to the total or partial separations of the workers of that company. In accordance with the provisions of the Act, I make the following certification:

All workers at C. Brewer and Company, Limited, Honolulu, Hawaii, who became totally or partially separated from employment on or after March 17, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16939 Filed 6-13-77;8:45 am]

[TA-W-1,590]

CONVERSE RUBBER CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 77-13290 appearing at page 23647 in the FEDERAL REGISTER of May 10, 1977, the impact date appearing on page 23648 in the 2nd column, 5th full paragraph, 4th line, should be corrected to read "October 16, 1976" immediately after the word "after."

Signed at Washington, D.C., this 25th day of May 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16940 Filed 6-13-77;8:45 am]

[TA-W-1958; TA-W-1960]

COBRE TIRE CO. AND FLETCHER SERVICE CO., BUTTE, MONTANA

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1958 and 1960: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on April 7, 1977 in response to worker petitions received on April 5, 1977 which were filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers on behalf of workers and former workers engaged in tire sales, maintenance and repairs at Cobre Tire Company (TA-W-1958) and Fletcher Service Company (TA-W-1960), Butte, Montana.

The notices of investigation were published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19939). No public hearing was requested and none was held.

The information upon which the determinations were made was obtained principally from officials of Cobre Tire Company, Fletcher Service Company and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of 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.

If any of the above criteria is not satisfied, a negative determination must be made.

Neither Cobre Tire Company nor Fletcher Service Company produce an article within the meaning of Section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in *Pan American World Airways Incorporated* (TA-W-153, 40 FR 54639). The only question in this case is whether the Anaconda Company, i.e., a firm which produces an article, namely copper, and for whom the service is provided, can be considered the "workers' firm". See Notice of Determination in *Nu-Car Driveaway, Incorporated* (TA-W-393, 41 FR 12749).

Cobre Tire Company is an Arizona corporation that was formed to supply giant, off-the-road tires to major users. Cobre Tire's Giant Tire Division and Fletcher Service in Butte, Montana provided tire sales and maintenance to the Anaconda Company in Butte.

Neither the Anaconda Company, on one hand, nor Cobre Tire or Fletcher Service, on the other hand, is financially or otherwise involved in the business of the other. Fletcher maintains its own fleet of service equipment necessary to the operation of its business. There is a contract between Anaconda and Cobre Tire at its Butte, Montana facility to provide a major portion of Anaconda's tire requirements.

The workers upon whose behalf these petitions were filed are paid by either Cobre Tire Company or Fletcher Service, respectively. They are supervised by and subject to the control of Cobre Tire or Fletcher Service personnel only, under terms of a union agreement. All employment benefits which they enjoy are provided and maintained by Cobre Tire or Fletcher Service.

CONCLUSION

After careful review of the issues and facts involved, I have determined that services of the kind provided by Cobre Tire Company and Fletcher Service Company, Butte, Montana are not "articles" within the meaning of Section 222(3) of the Trade Act of 1974, and that the Anaconda Company cannot be considered the "workers' firm". The petitions for trade adjustment assistance are therefore denied.

Signed at Washington, D.C. this 3rd day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16941 Filed 6-13-77;8:45 am]

[TA-W-1459]

CYCLOPS CORP., EMPIRE-DETROIT STEEL DIVISION, MANSFIELD, OHIO

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1459: 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 and former workers producing carbon, silicon, and stainless steel sheets and coils at the Mansfield, Ohio plant of Cyclops Corporation, Empire-Detroit Steel Division.

The Notice of Investigation was published in the FEDERAL REGISTER on January 7, 1977 (42 FR 1533). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Cyclops Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or 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 criteria (2) and (3) have been met but criteria (1) and (4) have not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPERATIONS

Workers are used interchangably on all four products. Average annual employment of production workers at the Mansfield, Ohio plant declined 1 percent in the 4th quarter of 1975 compared to the preceding quarter. Employment increased 8 percent in 1976 compared to 1975. Average weekly hours of work increased 9 percent in 1976 compared to 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales in quantity of hot rolled carbon steel decreased 16 percent in 1976 from 1975. Sales in quantity of cold rolled carbon steel increased 46 percent in 1976 from 1975. Sales in quantity of silicon steel decreased 13 percent in 1976 from 1975. Sales in quantity of stainless steel increased 82 percent in 1976 from 1975.

Production in quantity of hot rolled carbon steel decreased 10 percent in 1976 from 1975. Production in quantity of cold rolled carbon steel increased 43 percent in 1976 from 1975. Production in quantity of silicon steel decreased 8 percent in 1976 from 1975. Production in quantity of stainless steel increased 99 percent in 1976 from 1975.

INCREASED IMPORTS

Imports of hot rolled carbon steel sheet increased in 1973 to 1,786.5 thousand short tons from 2,231.0 thousand short tons in 1972, then decreased each successive year in 1974 and 1975. In 1976 imports increased to 1,635.9 thousand short tons from 1,509.2 thousand short tons in 1975. The ratio of imports to shipments decreased in 1973 to 11.0 percent from 16.3 percent in 1972. In 1974 the import/shipments ratio increased to 11.7 percent, increased further to 14.0 percent in 1975, then decreased in 1976 to 11.3 percent.

Imports of cold rolled carbon steel sheets decreased in 1973 to 2,704.4 thousand short tons from 3,236.2 thousand short tons in 1972, then decreased each successive year in 1974 and 1975. In 1976 imports increased to 2,350.7 short tons from 2,067.1 thousand short tons in 1975. The ratio of imports to shipments decreased in 1973 to 13.6 percent from 20.5 percent in 1972. In 1974 the imports/shipments ratio increased to 14.4 percent, increased further to 16.5 percent in 1975, then decreased in 1976 to 13.2 percent.

Imports of stainless steel sheet decreased in 1973 to 39.2 thousand short tons from 44.5 thousand short tons in 1972. In 1974 imports increased to 54.5 thousand short tons, decreased to 51.8 short tons in 1975, then increased to 68.9 short tons in 1976. The ratio of imports to shipments decreased in 1973 to 9.9 percent from 16.1 percent in 1972. It increased to 10.5 percent in 1974, increased again in 1975 to 22.4 percent, then decreased to 16.3 percent in 1976.

Imports of sheet and strip of silicon electrical steel are combined in one TSUSA category. Imports were not recorded for 1971. In 1973 imports decreased to 44.9 thousand net tons from 60.0 thousand net tons in 1972. Imports further decreased to 35.8 thousand net tons in 1974, then increased to 41.9 thousand net tons in 1975. For the first nine months of 1976, imports decreased to 25.8 thousand net tons from 37.1 thousand net tons in the first nine months of 1975. The ratio of imports to shipments decreased in 1973 to 5.2 percent from 8.5 percent in 1972, decreased further in 1974 to 4.2 percent, then increased in 1975 to 7.4 percent. In the first nine months of 1976 the ratio decreased to 5.7 percent compared to 8.7 percent for the first nine months of 1975.

Contributed Importantly

The Department's investigation revealed that customers of the Mansfield plant did not switch purchases from that plant to imports.

Some customers indicated their decrease in purchases from the Mansfield plant are attributable to a decline in demand for the products that plant produced. Others cited the weakness of the economy in general which resulted in decreased demand from their customers in various industries.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that imports of articles like or directly competitive with carbon, stainless, and silicon steel sheets and coils produced at the Mansfield, Ohio plant of the Cyclops Corporation did not contribute importantly to the total or partial separation of workers at the plant as required by Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of June 1977.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16942 Filed 6-13-77;8:45 am]

[TA-W-1926]

HAWAIIAN SUGAR CO., HILO, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1926, investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 30, 1977 in response to a worker petition received on March 25, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers engaged in employment related to the production of cane sugar and raw sugar at the Hawaiian Sugar Company, Hilo, Hawaii.

The notice of investigation was published in the Federal Register on April 12, 1977 (42 FR 19178). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

Significant Total or Partial Separations

Employment at C. Brewer and Company, Limited, and the Hawaiian Sugar Company declined 3.5 percent from 1975 to 1976, and declined 4.5 percent in the fourth quarter of 1976 compared to the same period in 1975, and declined 17.2 percent in the first quarter of 1977 compared to the first quarter of 1976.

Sales or Production, or Both, Have Decreased Absolutely

Sales of the Hawaiian Sugar Company are reflected in the sales of the sugar companies for which administrative and technical services are provided.

Sales of Ka'u Sugar Company declined 32.0 percent from 1975 to 1976, and declined 46.2 percent in the first quarter of 1977 compared to the same period in 1976.

Sales of Mauna Kea Sugar Company declined 38.5 percent from 1975 to 1976, and declined 7.5 percent in the first quarter of 1977 compared to the same period in 1976.

Sales of Wailuku Sugar Company declined 38.4 percent from 1975 to 1976, and declined 13.6 percent in the first quarter of 1977 compared to the same period in 1976.

Sales of Olokele Sugar Company declined 36 percent from 1975 to 1976, and declined 29 percent in the first quarter of 1977 compared to the first quarter of 1976.

Increased Imports

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

Contributed Importantly

The Hawaiian Sugar Company is integral to the operations of the sugar growing and processing companies, providing technical and administrative support. Import injury to the sugar companies affects employees engaged in administrative and technical employment related to growing and processing cane sugar.

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the price explosion in 1974 when prices rose to 57.3 cents per pound to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production.

This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from the Hawaiian Sugar Company. In addition there exists a threat of further declines in sales and further separations of workers due to expectations of continued pressure from imports of sugar.

The C and H Sugar refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at the Hawaiian Sugar Company, Hilo, Hawaii, contributed importantly to the total or partial separations of the workers of that company. In accordance with the provisions of the Act, I make the following certification:

All workers at the Hawaiian Sugar Company, Hilo, Hawaii, who became totally or partially separated from employment on or after March 17, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16943 Filed 6-13-77;8:45 am]

[TA-W-1726]

HILO COAST PROCESSING CO., PEPEEKEO, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1726: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 3, 1977 in response to a worker petition received on February 28, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers producing sugar cane and raw sugar on the Hilo Coast Processing Company, Pepeekeo, Hawaii, a Division of C. Brewer and Company, Ltd., Honolulu, Hawaii.

The notice of investigation was published in the FEDERAL REGISTER on April 15, 1977 (42 FR 14185). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment at C. Brewer and Company, Limited, and the Hilo Coast Processing Company increased from 1975 to 1976, however employment declined 0.4 percent from the third quarter of 1976 to the fourth quarter of 1976, and declined 5.2 percent in the first quarter of 1977 compared to the first quarter of 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of Hilo Coast Processing Company declined 38.5 percent from 1975 to 1976, and declined 7.5 percent in the first quarter of 1977 compared to the first quarter of 1976.

INCREASED IMPORTS

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

CONTRIBUTED IMPORTANTLY

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the explosion in 1974 when prices rose to 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production. This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from the Hilo Coast Processing Company. In addition there exists a threat of further declines in sales and further separations of workers due to the expectations on continual pressure from imports of sugar.

C and H Sugar Refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at Hilo Coast Processing Company, Pepeekeo, Hawaii, a Division of C. Brewer and Company, Limited, contributed importantly to the total or partial separations of the workers of that plantation. In accordance with the provisions of the Act, I make the following certification:

All workers at the Hilo Coast Processing Company, Pepeekeo, Hawaii, a Division of C. Brewer and Company, Limited, Honolulu, Hawaii, who become totally or partially separated from employment on or after October 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16944 Filed 6-13-77;8:45 am]

[TA-W-854]

JOLIET WROUGHT WASHER CO., JOLIET, ILLINOIS

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-854: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 30, 1976 in response to a worker petition received on April 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing washers at the Joliet, Illinois plant of the Joliet Wrought Washer Company, a Division of MSL Industries, Incorporated, Lincolnwood, Illinois.

The Notice of Investigation was published in the FEDERAL REGISTER on May 21, 1976 (41 FR 20949). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from officials of the Joliet Wrought Washer Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-

sistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without respect as to whether or not the other criteria have been met, criterion (4) has not been met.

The absolute level of imports of washers fluctuated from 14 million pounds in 1971 to 21 million pounds in 1972 and then to 16 million pounds in 1973. U.S. imports of washers declined from 22 million pounds in 1974 to 21 million pounds in 1975. Imports of washers increased to 30.57 million pounds in 1976, an increase of 50 percent.

The ratio of imports to domestic production fluctuated in a pattern similar to that of the absolute level of imports. The ratio of imports to domestic production was 4.8 percent in 1971, 6.6 percent in 1972 and 4.4 percent in 1973. The ratio of imports to domestic production declined from 5.9 percent in 1974 to 5.8 percent in 1975.

During the course of the investigation, customers who purchased washers from Joliet were contacted. Customers who decreased purchases from Joliet indicated that they did not switch to imported washers. Customers cited several different reasons for reduced purchases. Economic conditions was one important factor in reduced purchases. Some customers switched to other domestic sources of washers. Others indicated that changes in manufacturing requirements or obsolescence of machinery requiring washers resulted in reduced purchases.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with washers produced at the Joliet, Illinois plant of Joliet Wrought Washer Company, a Division of MSL Industries, Incorporated, did not contribute importantly to the total or partial separation of the workers at such plant as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16945 Filed 6-13-77;8:45 am]

[TA-W-1735]

KA'U SUGAR CO., PAHALA, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1735: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 3, 1977 in response to a worker petition received on February 28, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers producing sugar cane and raw sugar on the Ka'u Sugar Company plantation, Pahala, Hawaii, a Division of C. Brewer and Company, Ltd., Honolulu, Hawaii.

The notice of investigation was published in the Federal Register on March 22, 1977 (42 FR 15477). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

Significant Total or Partial Separations

Average annual employment of production workers at the Ka'u Sugar Company increased 4.1 percent from 1975 to 1976, and declined 4.9 percent in the fourth quarter of 1976 compared to the same period in 1975, and declined 10.5 percent in the first quarter of 1977 compared to the first quarter of 1976.

Sales or Production, or Both, Have Decreased Absolutely

Sales of Ka'u Sugar Company declined 32.0 percent from 1975 to 1976, and declined 46.2 percent in the first quarter of 1977 compared to the same period in 1976.

Increased Imports

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

Contributed Importantly

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the explosion in 1974 when prices rose to 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production. This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from the Ka'u Sugar Company. In addition there exists a threat of further declines in sales and further separations of workers due to the expectations of continual pressure from imports of sugar.

C and H Sugar Refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at Ka'u Sugar Company, Pahala, Hawaii, a Division of C. Brewer and Company, Limited, contributed importantly to the total or partial separations of the workers of that plantation. In accordance with the provisions of the Act, I make the following certification:

All workers at the Ka'u Sugar Company, Pahala, Hawaii, a Division of C. Brewer and Company, Limited, Honolulu, Hawaii, who became totally or partially separated from employment on or after October 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16946 Filed 6-13-77;8:45 am]

[TA-W-1744]

MAUNA KEA SUGAR CO., PAPAIKOU, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1744: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was intiated on March 3, 1977 in response to a worker petition received on February 28, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers producing sugar cane and raw sugar on the Mauna Kea Sugar Company plantation, Papaikou, Hawaii, a Division of C. Brewer and Company, Ltd., Honolulu, Hawaii.

The notice of investigation was published in the FEDERAL REGISTER on March 22, 1977 (42 FR 15477). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commision, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment ment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm 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 has 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 domestice production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average annual employment of production workers at the Mauna Kea Sugar Company declined 2 percent from 1975 to 1976, and declined 1 percent in the first quarter of 1977 compared to the same period of 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of Mauna Kea Sugar Company declined 38.5 percent from 1975 to 1976, and declined 7.5 percent in the first quarter of 1977 compared to the first quarter of 1976.

INCREASED IMPORTS

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

CONTRIBUTED IMPORTANTLY

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the explosion of 1974 when prices rose to 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production. This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from the Mauna Kea Sugar Company. In addition there exists a threat of further declines in sales and further separations of workers due to the expectations of continual pressure from imports of sugar.

C and H Sugar Refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at Mauna Kea Sugar Company, Papaikou, Hawaii, a Division of C. Brewer and Company, Limited, contributed importantly to the total or partial separations of the workers of that plantation. In accordance with the provisions of the Act, I make the following certification:

All workers at the Mauna Kea Sugar Company, Papaikou, Hawaii, a Division of C. Brewer and Company, Limited, Honolulu, Hawaii, who became totally or partially separated from employment on or after February 23, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16947 Filed 6-13-77;8:45 am]

[TA-W-1953]

OLOKELE SUGAR CO., KAUMAKANI, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1953: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 4, 1977 in response to a worker petition received on February 28, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers producing sugar cane and raw sugar on the Olokele Sugar Company plantation, Kaumakani, Hawaii, a Division of C. Brewer and Company, Ltd., Honolulu, Hawaii.

The notice of investigation was published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19938). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average annual employment of production workers at the Olokele Sugar Company declined 3 percent from 1975 to 1976, and declined 4 percent in the first quarter of 1977 compared to the same period of 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of Olokele Sugar Company declined 36 percent from 1975 to 1976, and declined 29 percent in the first quarter of 1977 compared to the first quarter of 1976.

INCREASED IMPORTS

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 total 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

CONTRIBUTED IMPORTANTLY

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the explosion in 1974 when prices rose to 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production. This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from the Olokele Sugar Company. In addition there exists a threat of further declines in sales and further separations of workers due to the expectations of continual pressure from imports of sugar.

C and H Sugar refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at Olokele Sugar Company, Kaumakani, Hawaii, a Division of C. Brewer and Company, Limited, contributed importantly to the total or partial separations of the workers of that plantation. In accordance with the provisions of the Act, I make the following certification:

All workers at the Olokele Sugar Company, Kaumakani, Hawaii, a Division of C. Brewer and Company, Limited, Honolulu, Hawaii, who became totally or partially separated from employment on or after October 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16948 Filed 6-13-77;8:45 am]

[TA-W-1761]

WAILUKU SUGAR CO., WAILUKU, HAWAII

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1761: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 3, 1977 in response to a worker petition received on February 28, 1977 which was filed by the International Longshoremen's and Warehousemen's Union on behalf of workers and former workers producing sugar cane and raw sugar on the Wailuku Sugar Company plantation, Wailuku, Hawaii, a Division of C. Brewer and Company, Ltd., Honolulu, Hawaii.

The notice of investigation was published in the FEDERAL REGISTER on March 22, 1977 (42 FR 15477). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials and publications of C. Brewer and Company, Ltd., the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of Agriculture, the State of Hawaii Department of Agriculture, industry analysts and Department files. In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average annual employment of production workers at the Wailuku Sugar Company increased 0.8 percent from 1975 to 1976, and declined 2 percent in the fourth quarter of 1976 compared to the same period in 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of Wailuku Sugar Company declined 38.4 percent from 1975 to 1976, and declined 13.6 percent in the first quarter of 1977 compared to the first quarter of 1976.

INCREASED IMPORTS

Imports of sugar decreased 2 percent between 1972 and 1973, moving from 5.46 million short tons to 5.33 million short tons. In 1974, sugar imports increased to 5.77 million short tons. Imports in 1975 totaled 3.88 million short tons and imports in 1976 increased 20 percent to 4.66 million short tons; the ratio of imports to domestic production also increased from 59 percent in 1975 to 66 percent in 1976.

Prior to 1974, imports were regulated by statute. Since the expiration of the Sugar Act on December 31, 1974, imported sugar has entered the United States in the absence of price restrictions and quota levels. As a result, domestic prices of sugar have been merged with world sugar prices subjecting domestic prices to the competitive forces of an increased supply of sugar in a previously regulated market.

CONTRIBUTED IMPORTANTLY

The world sugar supply surpasses demand by about 4 million tons. Sugar prices have dropped from the explosion in 1974 when prices rose to 57.3 cents per pound, to the January 1976 price of 11.5 cents per pound. Presently the price of raw sugar is under 11.0 cents per pound. Domestic sugar growers have been selling their products at prices below the cost of production. This disparity in cost of production and net return on sales of sugar has caused an absolute decline in sales and permanent separations of employees from the Wailuku Sugar Company. In addition there exists a threat of further declines in sales and further separations of workers due to the expectations of continual pressure from imports of sugar.

C and H Sugar Refining Company reported the sale of 1976 inventory was delayed 3 months due to glutted market conditions. It is projected that the sale of 1977 inventory will be delayed 4 months. Depressed prices resulting from the oversupply of sugar, yield lower returns to C. Brewer and Company leading to layoffs in 1976 and threatened layoffs in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with sugar products produced at Wailuku Sugar Company, Wailuku, Hawaii, a Division of C. Brewer and Company, Limited, contributed importantly to the total or partial separations of the workers of that plantation. In accordance with the provisions of the Act, I make the following certification:

All workers at the Wailuku Sugar Company, Wailuku, Hawaii, a Division of C. Brewer and Company, Limited, Honolulu, Hawaii, who became totally or partially separated from employment on or after October 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16949 Filed 6-13-77;8:45 am]

[TA-W-1966]

WOHL SHOE CO. WAREHOUSE, ST. LOUIS, MISSOURI

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1966: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 7, 1977 in response to a worker petition received on April 5, 1977 which was filed by three workers on behalf of workers and former workers of the St. Louis, Missouri warehouse of the Wohl Shoe Company, a division of Brown Group, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19939). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wohl Shoe Company, Brown Group, Inc., and Department files.

On May 28, 1976, the Department issued a Notice of Negative Determination regarding eligibility to apply for adjustment assistance for all workers at the St. Louis, Missouri warehouse (TA-W-693).

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 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.

If any of the above criteria is not satisfied, a negative determination must be made.

The Department of Labor has already determined that the performance of services is not included within the term "articles" as used in Section 222(3) of the Act. See Notice of Negative Determination in *Pan American World Airways, Incorporated* (TA-W-153; 40 FR 54639).

The St. Louis warehouse of Wohl Shoe Company is a finished goods warehouse handling footwear and accessories purchased for retail distribution by Wohl Shoe Company. Wohl Shoe Company performs no manufacturing operations. Footwear is purchased from both domestic and foreign sources; no more than 15 percent of the footwear purchased by Wohl in recent years has been produced by Brown Shoe Company, which is also a division of Brown Group. Employees of the warehouse are not involved in the production of an article within the meaning of Section 222(3) of the Act.

Employment reductions at the St. Louis warehouse in 1975 and in 1976 were due to a decision by Wohl to have shoe orders "pre-packed" by manufacturers prior to shipment.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that services of the kind provided by workers at the St. Louis, Missouri warehouse of Wohl Shoe Company are not "articles" within the meaning of Section 222(3) of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-16950 Filed 6-13-77;8:45 am]

LEGAL SERVICES CORPORATION

LEGAL AID & DEFENDER SOCIETY OF GREATER KANSAS CITY

Notice of Grants and Contracts

JUNE 8, 1977.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-29961. Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor and the State Bar Association of any State where legal assistance will thereby be initiated, of such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicy that it is considering the grant application submitted by:

Legal Aid & Defender Society of Greater Kansas City to serve the counties of Saline, Pettis, Benton, Vernon, St. Clair, Hickory, Cedar, Barton, Dade, Jasper, Lawrence, Newton, McDonald & Barry.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

THOMAS EHRLICH,
President.

[FR Doc.77-16781 Filed 6-13-77;8:45 am]

OKLAHOMA GREEN COUNTY LEGAL AID, INC.

Notice of Grants and Contracts

JUNE 8, 1977.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-29961. Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor and the State Bar Association of any State where legal assistance will thereby be initiated, of such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Oklahoma Green Country Legal Aid, Inc. which is created by the merger of Delaware & Adair Counties Legal Services and Tulsa County Legal Aid Society. Oklahoma Green Country Legal Aid will serve the counties of Osage, Tulsa, Delaware, Adair, Muskogee, Okmulgee, Cherokee and Creek.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colorado.

THOMAS EHRLICH,
President.

[FR Doc.77-16781 Filed 6-13-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

[Circular A-111]

JOINT FUNDING POLICIES AND PROCEDURES

AGENCY: Office of Intergovernmental Relations and Regional Operations (IRRO), OMB.

ACTION: Proposed joint funding assessment.

SUMMARY: The OMB Office of Intergovernmental Relations and Regional Operations is planning to conduct an assessment of joint funding. The joint funding program was authorized by the Joint Funding Simplification Act of 1974. This assessment is in response to the request by the Director of OMB that we review all management circulars issued and administered by this office.

To carry out this assessment it is planned to consult with selected State and local governments and interest groups, Federal agency staff both in headquarters and in the field and Federal Regional Councils.

The assessment is designed to cover the following: Assess Federal, State, and local needs and opportunities for effective use of joint funding;

Assess the joint funding process, and procedures to determine the need for improvements, modifications or substitutions with alternative mechanisms; and

Recommend appropriate process, regulation, legislation and organizational changes.

DATES: We would appreciate receiving comments and suggestions concerning joint funding policies and procedures and the conduct of the assessment on or before July 15, 1977.

ADDRESS: Please submit all comments and suggestions in writing to: Office of Management and Budget, Vincent Puritano, Deputy Associate Director, Office of Intergovernmental Relations and Regional Operations, 726 Jackson Place, NW., Washington, D.C. 20503.

ATTENTION: Joint Funding Assessment.

FOR FURTHER INFORMATION CONTACT:

Joseph Amaral, Jr. at 202-395-3980.

SUPPLEMENTARY INFORMATION: On the basis of the assessment findings and recommendations, appropriate changes, if needed, affecting the present OMB Circular A-111, issued in the FEDERAL REGISTER, July 30, 1976, will be published as a Notice of Proposed Rulemaking in accordance with the Federal Register Act, (49 Stat. 500, as amended; 44 USC Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I).

VINCENT PURITANO,
Deputy Associate Director for Intergovernmental Relations and Regional Operations.

[FR Doc.77-16849 Filed 6-13-77;8:45 am]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

ADVISORY GROUP ON SPACE SYSTEMS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Advisory Group on Space Systems.

DATE: July 6-7, 1977.
TIME: 9:30 a.m. to 4:30 p.m.

PLACE: Room 308, Old Executive Office Building, 17th and Pennsylvania Avenue, NW., Washington, D.C.

TYPE OF MEETING: Closed.

CONTACT PERSON: Mr. William Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, Telephone 202-395-4692.

PURPOSE OF ADVISORY GROUP: The Office of Science and Technology Policy, in accordance with the statutory mandate to analyse and interpret significant developments and trends in science & technology and relate these to their impact on achievement of national goals and objectives will be identifying and evaluating the implications of technological advances such as the availability of the reusable space shuttle and other supporting systems on future space applications programs, specifically those related to military systems.

AGENDA: 9:30 a.m. to 4:30 p.m.—classified discussion of draft materials prepared as part of the policy review process for the President and the National Security Council.

REASON FOR CLOSING: The committee will be reviewing sensitive classified national security information involving design and employment of space systems. These discussions come under exemption 1 of the Government in the Sunshine Act, Section 552b(c), Title 5, U.S.C.

AUTHORITY FOR CLOSING: The Director, Office of Science and Technology Policy has determined that this meeting deals with matters classified for national security and therefore should be closed.

WILLIAM MONTGOMERY,
Executive Officer.

[FR Doc.77-16792 Filed 6-13-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13593; SR-AMEX-75-15]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JUNE 2, 1977.

On December 23, 1975, the American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The rule change would establish a new class of memberships to be known as options principal members ("OPM's") to trade solely in options for their own accounts, subject to certain obligations.

Notice of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 11987 (January 7, 1976)) and notice together with the terms of substance of the proposed rule change was given by publication in the FEDERAL REGISTER (41 FR 2291 (January 15, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on December 23, 1975, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-16869 Filed 6-13-77;8:45 am]

[Release No. 20066; 70-6017]

CONNECTICUT YANKEE ATOMIC POWER CO.

Proposed Issue and Sale of Short-Term Notes to Banks and a Dealer in Commercial Paper; Exception from Competitive Bidding

JUNE 7, 1977.

Notice is hereby given that Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), P.O. Box 270, Hartford, Connecticut 06101, an electric utility subsidiary company of Northeast Utilities and New England Electric System, both of which are registered holding companies, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Connecticut Yankee proposes to issue and sell notes to banks and commercial paper to a dealer from time to time on or before June 30, 1978. The aggregate amount of all such notes at any time outstanding, whether issued to banks or to a dealer in commercial paper, will not exceed $20,000,000.

The bank notes to be issued by Connecticut Yankee will each be dated the date of issue, will have maximum maturity dates of nine months, and will bear interest at the prime rate. The bank notes will be issued no later than June 30, 1978, and will be subject to prepayment at any time at the Company's option without premium. Connecticut Yankee proposes to make such borrow-

ings from The Chase Manhattan Bank, New York, New York, and Bankers Trust Company, New York, New York, in a maximum principal amount at any one time outstanding from each bank of $12,000,000. Compensating balance requirements will not exceed 10 percent of the credit line plus 10 percent of the average borrowings outstanding under the line. No closing costs are required in connection with any of the proposed bank borrowings. Based on a prime rate of 6¾ percent the effective cost of such borrowings will be 8.44 percent.

The commercial paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue and will not be repayable prior to maturity. The commercial paper will be sold directly to Lehman Commercial Paper, Incorporated, at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity, sold by public utility issuers thereof to commercial paper dealers. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to Connecticut Yankee in excess of the effective bank interest rate at which Connecticut Yankee could obtain loans from banks in an amount at least equal to the principal amount of such commercial paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institutional investors at a discount of not more than ⅛ of 1 percent per annum less than the prevailing discount rate to Connecticut Yankee in such manner as not to constitute a public offering.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a nonpublic list prepared for Connecticut Yankee in advance by the purchasing dealer. No additions will be made to this customer list which includes commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, municipal and state benefit funds, eleemosynary institutions, finance companies and nonfinancial corporations purchasing such paper for the purpose of investing their funds on a short-term basis. It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

The funds to be derived from the issuance and sale of bank notes and commercial paper will be applied by Connecticut Yankee (i) to repay $5,500,000 of commercial paper presently outstanding pursuant to order of the Commission (HCAR No. 19407), (ii) to provide funds for construction, and (iii) to provide a portion of the funds required for the purchase of additional nuclear fuel through June 30, 1978.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

It is stated that the sale of the bank notes is excepted from the competitive bidding requirements of Rule 50 by reason of paragraph (a)(2) thereunder since no finder's fee or other fee, commission or renumeration is to be paid to any third person for negotiating the issuance and sale of such notes. Connecticut Yankee requests that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5)(B) thereof on the ground that it is not practicable to invite competitive bids for commercial paper and that current rates for commercial paper of prime borrowers such as Connecticut Yankee are published daily in financial publications. Connecticut Yankee further requests that the time during which certificates of notification may be filed pursuant to Rule 24 be extended to allow for filing on a quarterly basis.

Notice is further given that any interested person may, not later than July 1, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-16870 Filed 6-13-77;8:45 am]

[Release No. 13604; SR-MSE-77-8]

MIDWEST STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JUNE 7, 1977.

On April 11, 1977, the Midwest Stock Exchange, Inc. ("MSE"), 120 South LaSalle Street, Chicago, Illinois 60603, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The proposed rule change would rescind the MSE's present requirement that member advertisements be filed with the MSE promptly after initial use, unless previously cleared with another self-regulatory organization. In place of this requirement, the proposed rule change would require that all member advertisements be approved by a partner or officer of the member firm, be retained for at least three years, and be available for examination by the MSE during that time period.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13452, (April 19, 1977)) and by publication in the FEDERAL REGISTER (42 FR 22458 (May 3, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on April 11, 1977, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-16871 Filed 6-13-77;8:45 am]

[Release No. 34-13606; File No. SR-MSE-77-16]

MIDWEST STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on May 26, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE[1]

ARTICLE XIV

Limitation on Partners as Members

Rule 10. No person shall at the same time be a partner in more than one member firm, whether as a general or as a limited partner, nor shall he at the same time be an officer, director or stockholder of a member corporation, nor shall he be affiliated in any manner with a non-member firm or non-member corporation which is engaged in the securities business, unless such affiliation has been disclosed to and is approved by [the Exchange] *his member firm*.

[Dealer or Broker in Securities]

[Rule 11. No member shall be a general partner in a partnership doing business as a dealer or broker in securities unless the partnership be or be registered as a member firm.]

[Engagement in Business of Member Firm]

[Rule 12. Unless otherwise permitted by the Exchange, every member who is a general partner in a member firm must be actively engaged in the business of his firm and devote the major portion of his time thereto. No member shall become a partner in any firm or an officer or director of a corporation or participant in any business to which the Exchange shall have objected by written notice given him.]

Rule 13. Renumbered as Rule 11 with no change in text.

Rule 14. Renumbered as Rule 12 with no change in text.

Rule 15. Renumbered as Rule 13 with no change in text.

Rule 16. Renumbered as Rule 14 with no change in text.

Rule 17. Renumbered as Rule 15 with no change in text.

Rule 18. Renumbered as Rule 16 with no change in text.

ARTICLE XV

Officers, Directors and Principal Stockholders

Rule 6. (a) There shall also be filed with the Exchange and kept current a list and descriptive identification of all officers[,] *and* directors [and principal stockholders] of a member corporation, all of whom shall be subject to approval by the Exchange, and in the event of disapproval shall, subject to review of such disapproval in accordance with Rule 10 of Article XVI, be separated from the member corporation within a reasonable time. Officers, directors and principal stockholders of a member corporation who are not themselves members of the Exchange shall be bound by the Constitution and Rules of the Exchange. All of the principal officers and a majority of the directors of a member corporation shall be persons who are actively engaged in the conduct of the corporation's business: *Provided, however*, The Executive Committee may, upon application, except a member corporation from the requirement that a majority of the directors of a member corporation be persons who are actively engaged in the conduct of the corporation's business.

Interest in Other Corporations

Rule 9. [(a)] No member corporation, nor any officer, director or principal stockholder of such corporation, shall be affiliated with, or have any financial interest in, any other corporation or firm engaged in the securities business, unless such affiliation or financial interest has been duly disclosed to and approved by [the Exchange.] *the member corporation.*

[(b) Exchange approval of any such affiliation shall be conditioned upon compliance by such affiliate with the Constitution, Rules and polices of the Exchange applicable to

(1) The registration and regulation of officers, directors, stockholders, partners, branch office managers, registered representatives and securities salesmen, and

(2) Operations,

unless it is determined by the Exchange that compliance with a particular Rule or policy is not reasonably required for the protection of investors or the maintenance of just and equitable principles of trade.]

ARTICLE XVI

Employment of Registered [Representatives] *Persons*

Rule 5. [A registered representative shall devote full time to (i) the securities business and other businesses of the member organization that are authorized by, or have been approved by the Exchange pursuant to, Rule 1(c)(4) of Article I, and (ii) the securities business of any corporate affiliate or affiliates of the member organization approved by the Exchange pursuant to Rule 7 and Rule 9 of Article XV. Any employment of a registered representative not covered by the preceding sentence shall be reported to the Exchange and, upon notice to the member or member organization that the President has withheld or withdrawn approval of such employment, the same shall be terminated.]

(a) No member organization shall employ any registered representative or other person in a nominal position because of the business obtained by such person.

(b) Every partner, officer, director, branch office manager and sales representative who is assigned or delegated any responsibility or authority for the supervision or control of an office, department or business activity of a member organization shall devote his entire time during business hours to the business of such member organization.

(c) No partner, officer, director or employee of a member organization shall at any time be engaged in any other business; or be employed or compensated by any other person; or serve as an officer, director, partner or employee of another business organization; or own any stock or have, directly or indirectly, any financial interest in any other organization engaged in any securities, financial or kindred business without the prior written consent of his member organization employer.

(d) Any partner, officer, director or employee may become a partner, officer, director or employee in one or more organizations provided that such person may have supervisory responsibilities as described in paragraph (b) of this Rule in only one member organization. No member shall qualify more than one member organization for membership.

ARTICLE XVII

Officers and Employees of Exchange

Rule 15. (a) No member or member organization shall:

(1) Employ or compensate for services rendered, any officer or employee of the Exchange or of another member or member organization without the prior *written* consent of [both] the employer and, *in the case of floor employees, prior written consent of the employer and* the Exchange;

(2) Give any gratuity in excess of $25 per person per year to any officer or employee of the Exchange, or of another member or member organization or to any officer or employee of a news or financial information medium, bank, trust company, insurance company, or any corporation, firm or individual engaged in the business of dealing, either or broker or principal in stocks, bonds or other securities, bills of exchange, acceptances or other forms of commercial paper, without th prior *written consent of the employer and* the Exchange.

(b) For purposes of this Rule, a gift of any kind is considered a gratuity and an officer or employee of a corporation, a majority of whose capital stock is owned by the Exchange is considered an employee of the Exchange.

(c) A record shall be retained and be available for inspection by the Exchange for at least three years of each gratuity given to a person covered by (a)(2) above, including gratuities of $25 or less per person per year.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

(a) to abolish the requirement that registered persons, other than those in a supervisory capacity, devote their entire time during business hours to the business of their member organization. This will allow member organizations greater flexibility in both raising capital and serving a broader area of investors such as clients of insurance salesmen. It will also allow member organizations to better compete with non-members as many non-member organizations are permitted to have part time personnel. No change is made in the requirements for approval of any person associated with a member organization.

(b) To abolish the prohibition on investments in more than one broker or dealer. The Rule change would, however,

[1] *Italics* represent material to be added. [Brackets] represent material to be deleted.

require the prior approval of the member organization employer for such investment, as such organization is best qualified to determine whether or not such investment is in the best interest of the member organization or constitutes an unacceptable conflict of interest.

(c) To abolish the requirement, with the exception of floor employees, that the Exchange approve gratuities in excess of $25 to employees of other member organizations, the Exchange, or other financial institutions. The retention of the Exchange approval of gratuities to floor employees serves a valid regulatory function since it relates directly to the Exchange's ability to perform a surveillance function regarding the possibility of influencing the performance of member clerks or of purchasing business from other members.

The amendments relaxing the full time employment requirements and eliminating the prohibition on investments in more than one broker or dealer are consistent with section 6(b)(2) of the Act in that they enable qualified persons to become members or persons associated with members. Removal and relaxation of these requirements remove impediments to the mechanism of a free and open market and are consistent with section 6(b)(5) of the Act.

Comments have not been solicited. At the time the rules were presented to the Executive Committee, however, the Chairman of the Midwest Stock Exchange, Incorporated commented that he was opposed to proposed Article XVI, Rule 5(c) to the extent that the member organization employer would be required to approve an investment by a partner, officer, director or employee of a member organization in a publicly held company engaged in any securities, financial or kindred business. It was his opinion that such a restriction would be an unwarranted infringement on the personal rights of such persons to invest their money as they see fit. Nonetheless, it was determined to file the Rule in its present form as it is consistent with Rule changes proposed by the New York Stock Exchange* and it is the policy of this Exchange, wherever practical, to seek uniformity of regulation in areas such as covered by these rules.

The Midwest Stock Exchange, Incorporated believes that these Rule changes remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

On or before July 19, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date, if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether any of the proposed rule changes should be disapproved.

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* File No. SR-NYSE-77-11.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 5, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 7, 1977.

[FR Doc.77-16875 Filed 6-13-77;8:45 am]

[File No. 1-6092]

NATIONAL EQUIPMENT RENTAL, LTD.

Application to Withdraw From Listing and Registration

JUNE 7, 1977.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In the opinion of the management of the Company, the burden of filing those periodic reports that are required as a result of the listing of the debentures on this Exchange is disproportionate to the amount of debentures in the hands of public holders ($2,443,000 aggregate principal amount held by fewer than 250 public holders) and the amount of trading activity on the Exchange (an average of less than one debenture per day has traded thereon during the past two years).

Subject to four (4) conditions (which primarily deal with undertakings that have been made by the Company to continue to furnish public holders of the debentures with certain information, and to cause a registered broker-dealer to advertise a willingness to receive bids and offers for these bedentures in the over-the-counter market), the American Stock Echange, Inc., has determined not to interpose an objection to this application.

Any interested person may, on or before June 29, 1977 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-16872 Filed 6-13-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 8, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and registered on one or more other national securities exchanges:

Gamble-Skogmo, Inc., Common Stock, $5.00 Par Value, File No. 7-4947.
Universal Leaf Tobacco Co., Inc., Common Stock, No Par Value, File No. 7-4948.
Weatherhead Company (The), Common Stock, $1.00 Par Value, File No. 7-4949.

Upon receipt of a request, on or before June 24, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-16873 Filed 6-13-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 8, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and registered on one or more other national securities exchanges:

Esson Oil Company, Common Stock, No Par Value, File No. 7-4950.
Harman International Industries, Inc., Common stock, $1.00 Part Value, File 7-4951.
Knickerbocker Toy Co. Inc., Common Stock, $5.00 Par Value, File No. 7-4952.

Upon receipt of a request, on or before June 24, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-16874 Filed 6-13-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1339]

GEORGIA

Declaration of Disaster Loan Area

As a result of the President's declaration of June 2, 1977, and FDAA's designation of Bryan, Camden, Chatham, Glynn, Liberty, and McIntosh Counties in the State of Georgia, I find that these areas constitute a disaster area because of damage to shrimp resources as a result of severe cold weather beginning about January 14, 1977.

The Small Business Administration will accept applications for disaster relief loans from disaster victims within the above-named counties and adjacent counties within the State. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 1, 1977, and for economic injury until the close of business on March 1, 1978, at:

Small Business Administration, District Office, 1720 Peachtree Road, N.W., 6th Floor, Atlanta, Georgia 30309

or other locally announced locations.

Dated: June 6, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16896 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1337]

KANSAS

Declaration of Disaster Loan Area

The Counties of Douglas and Johnson, and adjacent counties within the State of Kansas, constitute a disaster area because of physical damage resulting from tornadoes and concurrent rainfall which occurred on May 5, 1977. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 1, 1977, and for economic injury until March 1, 1978, at:

Small Business Administration, District Office, 12 Grand Building, 5th Floor, 1150 Grand Avenue, Kansas City, Missouri 64106.

Dated: June 2, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16897 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1311; Amdt. No. 1]

KENTUCKY

Declaration of Disaster Loan Area

The above numbered Declaration (See 42 FR 19538) is amended by extending the filing date for physical damage until the close of business on August 8, 1977, and for economic injury until the close of business on March 10, 1978.

Dated: May 31, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16898 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1338]

MASSACHUSETTS

Declaration of Disaster Loan Area

The Counties of Essex and Plymouth, and adjacent counties within the State of Massachusetts, constitute a disaster area because of physical damage resulting from storms and high winds which occurred on May 9-11, 1977. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 1, 1977, and for economic injury until March 1, 1978, at:

Small Business Administration, District Office, 150 Causeway Street, 10th Floor, Boston, Massachusetts 02114.

or other locally announced locations.

Dated: June 1, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16899 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1332; Amdt No. 1]

MISSOURI

Declaration of Disaster Loan Area

The above numbered Declaration (see 42 FR 27080) is amended in accordance with the President's declaration of May 7, 1977, to include Carroll and Ray Counties, Missouri. The Small Business Administration will accept applications for disaster relief loans from disaster victims within the above named counties and adjacent counties within the State, and is extending the filing date for physical damage until the close of business on July 13, 1977, and for economic injury until the close of business on February 14, 1978.

Dated: May 26, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16900 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1336]

VERMONT

Declaration of Disaster Loan Area

The Area of 150 Bank Street in the City of Burlington, Chittenden County, Vermont, constitutes a disaster area because of damage resulting from a fire which occurred on May 1, 1977. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on August 1, 1977, and for economic injury until March 1, 1978, at:

Small Business Administration, District Office, 87 State Street, Montpelier, Vermont 05602.

Dated: June 2, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16901 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1312]

VIRGINIA

Declaration of Disaster Loan Area

The above numbered Declaration (see 42 F.R. 20695), Amendment No. 1 (see 42 F.R. 21887) and Amendment No. 2 (see 42 F.R. 23220) are amended by extending the filing date for physical damage until the close of business on August 19, 1977, and for economic injury un-

til the close of business on March 24, 1978.

Dated: May 31, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16901 Filed 6-13-77;8:45 am]

[Declaration of Disaster Loan Area No. 1313; Amdt. No. 2]

WEST VIRGINIA

Declaration of Disaster Loan Area

The above numbered Declaration (see 42 FR 20695), and Amendment No. 1 (see 42 FR 21887) are amended by extending the filing date for physical damage until the close of business on August 12, 1977, and for economic injury until the close of business on March 13, 1978.

Dated: May 31, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-16903 Filed 6-13-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 412]

ASSIGNMENT OF HEARINGS

JUNE 9, 1977.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

FF 252 Sub 4, Chi-Can Freight Forwarding Ltd. now being assigned July 26, 1977 (9 days) at Chicago, Illinois in a hearing room to be later designated.

MC 138627 Sub 14, Smithway Motor Xpress, Inc. now assigned June 16, 1977 at Omaha, Nebraska is cancelled, application dismissed.

MC 142754, Pirollo Transport Co., Inc. now assigned June 15, 1977 at Washington, D.C. is cancelled.

MC 54444 (Sub-No. 6), Main Express & Storage Co., now assigned July 11, 1977, at Madison, Wis., is canceled and transfered to Modified Procedure.

MC 107107 Sub 452, Alterman Transport Lines, Inc. now being assigned July 26, 1977 (9 days) at Chicago, Illinois in a hearing room to be later designated.

MC 142664 Sub 2, Import Dealers Service Corp. now assigned July 12, 1977 at Los Angeles, California is being postponed indefinitely.

No. 36597, Increased Fares, Asbury Park-New York Transit Corporation, May 1977 now being assigned July 25, 1977 (9 days) at New York, New York in a hearing room to be later designated.

AB 1 Sub 34, Chicago and North Western Transportation Company Abandonment Between Norfolk, Nebraska and Winner, South Dakota in Madison, Pierce, Antelope, Knox and Boyd Counties, Nebraska and Gregory and Tripp Counties, South Dakota now assigned July 12, 1977 at Norfolk, Nebraska for 9 days has been amended as follows: July 12 through 15 at Norfolk, Nebraska at the Northeast Technical Community, 801 East Benjamin Avenue and July 18 through July 19 at Winner, South Dakota in the City Council Room, 217 East Third Street.

MC-C 9616, Brink's Inc. v. Wells Fargo Armored Service Corporation now assigned July 18, 1977 at New York, New York is being cancelled.

MC 135052 Sub 10, Ashcraft Trucking, Inc. now being assigned July 26, 1977 (1 day) at Louisville, Kentucky, in a hearing room to be later designated.

MC 134922 Sub 189, B. J. McAdams, Inc. now being assigned July 27, 1977 (1 day) at Louisville, Kentucky in a hearing room to be later designated.

MC 128555 Sub 14, Meat Dispatch, Inc. now being assigned July 28, 1977 (1 day) at Louisville, Kentucky in a hearing room to be later designated.

MC 107678 (Sub-No. 61), Hill & Hill Truck Line, Inc.; MC 5623 (Sub-29), Arrow Trucking Co.; MC 13250 (Sub-136), J. H. Rose Truck Line, Inc.; MC 14743 (Sub-No. 28), E. L. Powell & Sons Trucking Co., Inc.; MC 19227 (Sub-232), Leonard Bros. Trucking Co., Inc.; MC 19416 (Sub-14), Dunn Bros., Inc.; MC 23618 (Sub-24), McAlister Trucking Company, d/b/a MATCO; MC 42011 (Sub-31), D. Q. Wise & Co., Inc.; MC 43867 (Sub-32), A. Leander McAlister Trucking Company; MC 54847 (Sub-12), Intracoastal Truck Line, Inc.; MC 60157 Sub-25), C. A. White Trucking Company; MC 63792 (Sub-27), Tom Hicks Transfer Company, Inc.; MC 66886 (Sub-53), Belger Cartage Service, Inc.; MC 68100 (Sub-18), D. P. Bonham Transfer, Inc.; MC 74321 (Sub-127), B. F. Walker, Inc.; MC 83835 (Sub-136), Wales Transportation, Inc.; MC 93318 (Sub-18), Joe D. Hughes, Inc.; MC 99214 (Sub-6), Patterson Truck Line, Inc.; MC 102181 (Sub-8), O. H. & F., Inc.; MC 105984 (Sub-17), John B. Barbour Trucking Company; MC 106407 (Sub-31), T. E. Mercer Trucking Co.; MC 106775 (Sub-42), Atlas Truck Line, Inc.; MC 107993 (Sub-51), J. J. Willis Trucking Company; MC 109064 (Sub-32), Tex-O-Ka-N Transportation Company, Inc.; MC 110817 (Sub-22), E. L. Farmer & Company; MC 112304 (Sub-115), Ace Doran Hauling & Rigging Co.; MC 113459 (Sub-108), H. J. Jeffries Truck Line, Inc.; MC 115603 (Sub-13), Turner Bros. Trucking Company, Inc.; MC 117574 (Sub-282), Daily Express, Inc.; MC 119176 (Sub-15), The Squaw Transit Company; MC 119774 (Sub-91), Eagle Trucking Company; MC 120257 (Sub-33), K. L. Breeden & Sons, Inc.; MC 120675 (Sub-3), Acme Truck Line, Inc.; MC 120761 (Sub-19), Newman Bros. Trucking Company; MC 124947 (Sub-57), Machinery Transports, Inc. and MC 138322 (Sub-4), BHY Trucking, Inc., continued to June 28, 1977 (4 days), at the Pittsburgh Hilton Hotel, Gateway Center, Pittsburgh, Pennsylvania; July 12, 1977 (4 days), at the Los Angeles Mariott, 5855 West Century Boulevard, Los Angeles, California; July 19, 1977 (4 days), at the Holiday Inn Roverfront, 4th & Pine, St. Louis, Missouri and July 25, 1977 (2 weeks) at the Whitehall Hotel, Cullen Center, Houston, Texas.

MC 138134 Sub 7, Donald Holland Trucking, Inc. now being assigned July 25, 1977 (1 day) at Chicago, Illinois in a hearing room to be lated designated.

MC 142640, P.W.K. Terminals, Inc. now being assigned July 26, 1977 (1 day) at Chicago, Illinois in a hearing room to be later designated.

MC 123294 Sub 40, Warsaw Trucking Co., Inc. now being assigned July 27, 1977 (1 day) at Chicago, Illinois in a hearing room to be later designated.

FFC 67, Max Gruenhut, GMBH & Co., Max Gruenhut International, Inc., Inland Imports, Inc., and Green Container Transport, Inc.—Investigation of Operations now being assigned July 28, 1977 (2 days) at Chicago, Illinois in a hearing room to be latter designated.

MC 142565 Sub 1, Don Ray Drive-A-Way Co., Inc. now being assigned August 1, 1977 (1 week) at Chicago, Illinois in a hearing room to be later designated.

MC 141804 (Sub-No. 31), Western Express, Inc., now being assigned July 13, 1977 (1 day), at Los Angeles, Calif., in a hearing room to be later designated.

MC 141172 (Sub-No. 1), Retta Trucking Co., Inc., now assigned July 20, 1977, at New York, N.Y. is canceled and application dismissed.

MC 117883 (Sub-No. 209), Subler Transfer Inc., now assigned July 6, 1977, at Chicago, Ill. is canceled and application dismissed.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-16921 Filed 6-13-77;8:45 am]

[Notice No. 178]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 14, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212(b) and Transfer Rules, 49 C.F.R. Part 1132:

No. MC-FC 77164. By application filed June 7, 1977, LA SALLE TRUCKING, INC., 2102 Manor Lane, Peru, IL 61354, seeks temporary authority to transfer the operating rights of EDWARD C. LIMPERIS, ASSIGNEE FOR THE BENEFIT OF CREDITORS OF STAR WEST CARTAGE COMPANY, INC., d/b/a STAR WEST CARTAGE COMPANY, INC., 430 E. Wacker Drive, Chicago, IL 60601, under section 210a(b). The transfer to LA SALLE TRUCKING, INC., of the operating rights of EDWARD C. LIMPERIS, ASSIGNEE FOR THE BENEFIT OF CREDITORS OF STAR WEST CARTAGE COMPANY, INC., d/b/a STAR WEST CARTAGE COMPANY, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-16922 Filed 6-13-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 9, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before June 29, 1977.

FSA No. 43374—*Household Goods from Houston, Texas (Import)*. Filed by Southwestern Freight Bureau, Agent, (No. B-682), for interested rail carriers. Rates on household goods, in carloads, as described in the application, from Houston, Texas (Import), to ramp points in southwestern and western trunk-line territories—TOFC Plan II½.

Grounds for relief—Market competition.

Tariffs—Supplement 184 to Southwestern Freight Bureau, Agent, tariff 74-G, I.C.C. No. 5127, and 4 other schedules named in the application. Rates are published to become effective on July 9, 1977.

FSA No. 43375—*Various Commodities from Channelview, Texas*. Filed by Southwestern Freight Bureau, Agent, (No. B-680), for interested rail carriers. Rates on various commodities, in carloads, as described in the application, from Channelview, Texas, to Interstate destinations.

Grounds for relief—Market competition.

Tariffs—Supplements 41, 263, and 70 to Southwestern Freight Bureau, Agent, tariffs 210-M, 354-C, and 357-C, I.C.C. Nos. 5245, 5084, and 5215, respectively. Rates are published to become effective on July 13, 1977.

FSA No. 43377—*Joint Water-Rail Container Rates—Orient Overseas Container Line, Inc.* Filed by Orient Overseas Container Line, Inc., (No. 4), for itself and interested rail carriers. Rates on general commodities, between Far East, Philippines, and South East Asia ports, and rail carrier's terminals on the U.S. Atlantic and Gulf Coast. Grounds for relief—Water competition.

AGGREGATE-OF-INTERMEDIATES

FSA No. 43376—*Various Commodities from Channelview, Texas*. Filed by Southwestern Freight Bureau, Agent, (No. B-681), for interested rail carriers. Rates on various commodities, in carloads, as described in the application, from Channelview, Texas, to points in Illinois, Iowa, and Missouri.

Grounds for relief—Maintenance of depressed rates published to meet market competition without use of such rates as factors in constructing combination rates.

Tariffs—Supplements 41 and 263 to Southwestern Freight Bureau, Agent, tariffs 210-M and 354-C, I.C.C. Nos. 5245 and 5084, respectively. Rates are published to become effective on July 13, 1977.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc.77-16923 Filed 6-13-77;8:45 am]

[Notice No. 73]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 9, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 2900 (Sub-No. 304TA), filed May 19, 1977. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408, Jacksonville, Fla. 32209. Applicant's representative: John Carter (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Boats*, from Alachua, Fla., to points in the United States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hunter Marine, P.O. Box 1030, Route 441, Alachua, Fla. 32615. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay St., Jacksonville, Fla. 32202.

No. MC 26396 (Sub-No. 146TA), filed May 11, 1977. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, P.O. Box 990, Livingston, Mont. 59047. Applicant's representative: Jacob P. Billig, 2033 K Street, NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement pipes*, containing asbestos fiber and accessories necessary for the installation thereof, from the plantsite and storage facilities of Certain-Teed at Bellefontaine Neighbors, Mo., to points in the states of Arkansas, Colorado, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Paul D. Bruno, Traffic Supervisor, Certain-Teed Corporation, P.O. Box 860, Valley Forge, Pa. 19482. Send protests to: District Supervisor Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, Mont. 59101.

No. MC 28088 (Sub-No. 27TA), filed May 27, 1977. Applicant: NORTH & SOUTH LINES, INCORPORATED, 2710 South Main Street, Harrisonburg, Va. 22801. Applicant's representative: John R. Sims, Jr., 915 Pennsylvania Building, Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products* (except in bulk), from the facilities of International Salt Company at New Kensington, Pa., and Horseheads, N.Y., to Harrisonburg, Va., restricted to the transportation of shipments moving to Harrisonburg for in-transit storage for 180 days. Supporting shipper(s): International Salt Co. 30 Buxton Farm Road, Stamford, Conn. 06905. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 35807 (Sub-No.76TA), filed May 27, 1977. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, Atlanta, Ga. 30302. Applicant's representative: Steven J. Thatcher, P.O. Box 4313, Atlanta, Ga. 30302. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Currency, coin and securities*, between Livingston, Mont., and all points and places in that part of Yellowstone National Park lying within Wyoming for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hamilton Stores, Inc. West Yellowstone, Mont. 59758. Yellowstone Park Company , Yellowstone National Park, Wyo. 82190. National Park Service, Yellowstone National Park, Wyo. 82190. The First National Park Bank in Livingston, Box 672, Livingston, Mont. 59047. Send protests to: Sara K. Davis Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree Street NW., Room 546, Atlanta, Ga. 30309.

No. MC 52579 (Sub-No. 162TA), filed May 19, 1977. Applicant: GILBERT

CARRIER CORP., One Gilbert Drive, Secaucus, N.J. 07094. Applicant's representative: Irwin Rosen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel on hangers*, from Paris, Tex.; Winfield, La.; Arkadelphia, Ark., and Hamilton, Ala., to Memphis, Tenn., from Memphis, Tenn., to points and places in the States of California, Colorado, Florida, Georgia, Illinois, Indiana, Michigan, Minnesota, Missouri, New York Commercial Zone, Ohio, Pennsylvania, Texas, for 180 days. Supporting shipper: Vassarette, 4791 Burbank Road, Memphis, Tenn. 38118. Send protests to: District Supervisor Robert E. Johnston, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 59655 (Sub-No. 9TA), filed May 27, 1977. Applicant: SHEENAH CARRIERS, INC., 62 Lime Kiln Road, Suffern, N.Y. 10901. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, and materials and supplies* used in the manufacture, distribution or sale of containers, from the facilities of National Can Corporation at Piscataway, N.J., and Fogelsville, Pa., to Richmond and Williamsburg, Va., for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): National Can Corporation, Rt. No. 287 at South Randolphville Road, Piscataway, N.J. 08854. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 68860 (Sub-No. 25TA), filed May 26, 1977. Applicant: RUSSELL TRANSFER, INCORPORATED, 444 Glenmore Drive, Salem, Va. 24153. Applicant's representative: Liniel G. Gregory, Jr., 444 Glenmore Drive, Salem, Va. 24153. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers or sheets, paper, pulp board, cardboard, incandescent electric lamps and wooden pallets*, between St. Marys, Pa., and Roanoke, Va., for 180 days. Supporting shipper(s): Roanoke Box Company, Inc. 621 Ashlawn Street SW., Roanoke, Va. 24015. Send protests to: Danny R. Breeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 73165 (Sub-No. 407TA), filed May 24, 1977. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd Street, P.O. Box 11086, Birmingham, Ala. 35202. Applicant's representative: William P. Parker, 830 North 33rd Street, Birmingham, Ala. 35202. Authority suoght to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from the facilities of Masonite Corporation located at or near Meridian, Miss., to points in Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee for 180 days. Applicant has also filed an undelying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Masonite Corporation, P.O. Box 5777, Meridian, Miss. 39301. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616-2121 Building, Birmingham, Ala. 35203.

No. MC 82079 (Sub-No. 49TA), filed May 26, 1977. Applicant: KELLER TRANSFER LINE, INC., 5635 Clay Avenue SW., Grand Rapids, Mich. 49508. Applicant's representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, Mich. 49503. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery products*, except in bulk, in mechanically refrigerated vehicles, from the plantsite and warehouse facilities of E. J. Brach & Sons in Chicago and Carol Stream, Ill., and their commercial zones to points in Michigan on, north and west of a line beginning at the intersection of U.S. 23 and M-21 and east on M-21 to M-15 and north on M-15 to Bay City, Mich. for 180 days. Supporting shipper(s): E. J. Brach & Sons, Chicago, Ill. 60690. Send protests to: C. R. Flemming District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, Mich. 48933.

No. MC 82841 (Sub-No. 208TA), filed May 26, 1977. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, Nebr. 68127. Applicant's representative: William E. Christensen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Irrigation systems and parts for irrigation systems and accessories*, from Brownfield, Tex., to Arizona, Colorado, Delaware, Illinois, Michigan, New Mexico, Nevada, Oregon, and Utah for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): V. A. Hedlund Jr., General Manager, Tri-Matic, Inc. P.O. Box 1152, 1406 Lubbock Road, Brownfield, Tex. 79316. Send protests to: Carroll Russell District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 98154 (Sub-No. 17TA), filed May 18, 1977. Applicant: BRUCE CARTAGE, INCORPORATED, 3460 East Washington Road, Saginaw, Mich. 48601. Applicant's representative: Karl Gotting, 1220 Bank of Lansing Building, Lansing, Mich. 48933. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except household goods as defined by the Commission, motor vehicles when transported in special equipment, between Midland, Mich., and its commercial zone and the Detroit, Toledo, and Ironton Railroad Company loading ramp in Brownstown Township, Wayne County, Mich. for 180 days. Supporting shipper: Dow Chemical U.S.A., Midland, Mich. 48640. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, Mich. 48933.

No. MC 99427 (Sub-No. 35TA), filed May 26, 1977. Applicant: ARIZONA TANK LINES, INC., P.O. Box 855, 666 Grand Avenue, Des Moines, Iowa 50309. Applicant's representative: E. Check (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrofluoric acid*, in bulk, in shipper-owned tank vehicles, from Phoenix, Ariz., to Kokomo, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kerley Chemical Corp. of Arizona, 2801 West Osborn Road, Phoenix, Ariz. 85017. Send protests to: Herbert W. Allen District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 103993 (Sub-No. 894TA), filed May 26, 1977. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, Ind. 46514. Applicant's representative: Paul D. Borghesani, 28651 U.S. 20 West, Elkhart, Ind. 46514. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vacuums mounted on undercarriages*, from the plantsite of Gravel-Vac Service Co., Inc., at or near Grand Rapids, Mich., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Gravel-Vac Service Co., Inc. 1740 Olson N.E., Grand Rapids, Mich. 49503. Send protests to: J. H. Gray District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, Ind. 46802.

No. MC 108207 (Sub-No. 461TA), filed May 26, 1977. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: Mike Smith, P.O. Box 5888, Dallas, Tex. 75242. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Packaged meat and meat products*, from Searcy, Ark., to points in Arizona, California, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Land O'Frost, Inc. 16850 Chicago Avenue, Lansing, Ill. 60438. Send protests to: Opal M. Jones Transportation Assistant, Interstate commerce Commission, 1100 Comerce Street, Room 13C12, Dallas, Tex. 75242.

No. MC 112696 (Sub-No. 56TA), filed May 26, 1977. Applicant: HARTMANS, INCORPORATED, P.O. Box 898, 833 Chicago Avenue, Harrisonburg, Va. 22801. Applicant's representative: Edward G. Villalon, Suite 1032, Pennsylvania Building, Pennsylvania Avenue &

13th Street, N.W., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poultry and animal feeding, watering and heating equipment and parts and accessories therefor and those used in the installation thereof, and incinerators, heaters and fire grates and parts and accessories thereof*, from Harrisonburg, Va., to points in Minnesota, Iowa, Kansas, Oklahoma, and Texas and to points in the United States east thereof for 180 days. Supporting shipper(s): Shenandoah Manufacturing Co., Inc., P.O. Box 839, Harrisonburg, Va. 22801. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 113678 (Sub-No. 670TA), filed May 24, 1977. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, Colo. 80022. Applicant's representative: David L. Metzler, P.O. Box 16004 Stockyards Station, Denver, Colo. 80216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat*, from Payette, Idaho to Denver and Pueblo, Colo., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wells and Davies, Inc., P.O. Box 218, Payette, Idaho 83661. Send protests to: Herbert C. Ruoff District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, Colo. 80202.

No. MC 117416 (Sub-No. 56TA), filed March 31, 1977. Applicant: NEWMAN & PEMBERTON CORPORATION, 2007 University Avenue, N.W., Knoxville, Tenn. 37921. Applicant's representative: Herbert Alan Dubin, 1819 H Street, N.W., Suite 1030, Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal powders and barium ferrite* (except in bulk), from the facilities of Greenback Industries located at or near Greenback, Tenn., to points in Kentucky, Illinois, Indiana, Ohio, and Michigan, for 180 days. Supporting shipper(s): Greenback Industries, Greenback, Tenn. 37742. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 119630 (Sub-No. 14TA), filed May 24, 1977. Applicant: VAN TASSEL, INCORPORATED, 5th and Grand, Pittsburg, Kans. 66762. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, 3535 N.W. 58th Street, Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wallboard and materials, supplies and accessories* incidental to the installation thereof, from Pittsburg, Kansas to points in Missouri for 180 days. Supporting shipper(s): United States Gypsum Company, 101 South Wacker Drive, Chicago, Ill., 60606. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101 Litwin Building, Wichita, Kans. 67202.

No. MC 119974 (Sub-No. 67TA), filed May 18, 1977. Applicant: L. C. L. TRANSIT COMPANY, 949 Advance St., Green Bay, Wis. 54305. Applicant's representative: L. P. Able (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irreglar routes, transporting: (1) *Products of corn*, in bulk, in tank trucks, from Argo, Ill., to Connecticut, Delaware, Maryland, District of Columbia, Alabama, Georgia, South Carolina, North Carolina, Canton and Marion, Ohio, Bluefield, Huntington, and Parkersburg, West Virginia, Buckner, Louisville, Middlesboro, and Paducah, Kentucky, (2) *products of corn*, inedible, in bulk, in tank trucks from Argo, Ill., to Indiana (except Indianapolis), Ohio (except Cincinnati and Columbus), Pennsylvania (except Pittsburgh), New York, New Jersey, Missouri, Colby, and Milwaukee, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: CPC International, Inc., International Plaza, Englewood Cliffs, N.J. 07632, (Roger V. Haugen). Send protests to: Gail Daugherty, Transportation Asst., Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Rm. 619, Milwaukee, Wis. 53202.

No. MC 123476 (Sub-No. 26TA), filed May 18, 1977. Applicant: CURTIS TRANSPORT, INC., 3616 Jeffco Blvd., Arnold, Mo. 63010. Applicant's representative: David G. Dimit (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Expanded plastic products* (except in bulk, in tank vehicles) with refused or rejected shipments on return from Channahon, Ill., to points in the United States in and east of Montana, Wyoming, Colorado, and New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Eastern/Central Division Dow Chemical U.S.A., P.O. Box 36000, Strongsville, Ohio 44136. Send protests to: District Supervisor, J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Rm. 1465, 210 N. 12th St., St. Louis, Mo. 63101.

No. MC 124078 (Sub-No. 729TA), filed May 18, 1977. Applicant: SCHWERMAN TRUCKING CO., 611 South 28 St., Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, from Buffington, Ind., to East Stroudsburg, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United States Steel Corporation, 600 Grant St. Pittsburgh, Pa. 15230 (R. M. Corcoran). Send protests to: Gail Daugherty, Transportation Asst. Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Rm. 619, Milwaukee, Wis. 53202.

No. MC 124078 (Sub-No. 731TA), filed May 26, 1977. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, in bulk, from the Schwerman Distribution Centers, Inc. at Milwaukee, Wis., to points in Illinois and Indiana for 180 days. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 1139R, Morristown, N.J. 07960. Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 124078 (Sub-No. 732TA), filed May 25, 1977. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from Hudson and Greenport, Columbia County, N.Y., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont for 180 days. Supporting shipper(s): Independent Cement Corporation, 65 Williams Street, Wellesley, Mass. 02181. (Dennis W. Skidmore). Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 124078 (Sub-No. 733TA), filed May 25, 1977. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mortar*, in bulk, from Knowles, Wis., to Shippingport, Pennsylvania for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Western Lime & Cement Company, P.O. Box 2076, Milwaukee, Wis. 53201. (Darrel Hegy) Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 124078 (Sub-No. 734TA), filed May 25, 1977. Applicant: SCHWERMAN TRUCKING COMPANY, 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Pre-

vette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfuric acid*, in bulk, in tank vehicles, from Savannah, Ga., to points in North Carolina for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Cyanamid Company, Bound Brook, N.J. 08805. (Robert P. Hannigan) Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 124511 (Sub-No. 34TA), filed May 27, 1977. Applicant: JOHN F. OLIVER, P.O. Box 223, E. Highway 54, Mexico, Mo. 65265. Applicant's representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from New Lenox Township, Will County, Ill., to points in Callaway County, Mo., and Coffey County, Kans., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): United States Steel Corporation, 600 Grant Street, Room 1569, Pittsburgh, Pa. 15230. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 128527 (Sub-No. 84TA), filed May 25, 1977. Applicant: MAY TRUCKING COMPANY, P.O. Box 398, Payette, Idaho 83661. Applicant's representative: C. Marvin May, P.O. Box 398, Payette, Idaho 83661. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hanging carcass, fresh meat, and packinghouse products in vats, tubs or disposable bins*, from the plantsite of Columbia Foods, Inc., a subsidiary of Iowa Beef Processors, Inc., at or near Wallula, Wash., to points in Ada County, Idaho for 180 days. Applicant does not intend to tack or interline authority. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Iowa Beef Processors, Inc. Senior Transportation Technician, H. L. Denison, Dakota City, Nebr. 68731. Send protests to: District Supervisor Barney L. Hardin, Interstate Commerce Commission, 550 W. Fort Street, Box 07, Boise, Idaho. 83724.

No. MC 128831 (Sub-No. 12TA), filed May 26, 1977. Applicant: DIXON RAPID TRANSFER, INC., Route 65 East, Dixon, Ill. 61054. Applicant's representative: Robert H. Levy, 29 S. LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and duct* used in heating, cooling, A/C and exhaust systems, materials and supplies used in the installation thereof and building construction wall sections and accessories and parts used in the installation thereof, from the plantsite of United S/M Division of United McGill Corp., Westerville, Ohio to points in Illinois, Indiana, Iowa, Minnesota, Nebraska and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): United Sheet Metal, Harry L. Keebaugh, Traffic Manager, 200 E. Broadway Street, Westerville, Ohio 43081. Send protests to: Transportation Assistant Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, Ill. 60604.

No. MC 129394 (Sub-No. 6TA), filed May 17, 1977. Applicant: RONALD HACKENBERGER, an individual doing business as RON'S TRUCKING SERVICE, Route 250, North RFD No. 3, Norwalk, Ohio 44857. Applicant's representative: Richard H. Brandon, 220 West Bridge St., P.O. Box 97, Dublin, Ohio 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, from points in Carter County, Ky., to Findlay, Sandusky and Bowling Green, Ohio, under a continuing contract, or contracts, with Chem-Col., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Chem-Col., Inc., 50 Baker Boulevard, Akron, Ohio 44313. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, Ohio 43604.

No. MC 129455 (Sub-No. 19TA), filed May 20, 1977. Applicant: CARRETTA TRUCKING, INC., 301 Mayhill Street, Saddle Brook, N.J. 07662. Applicant's representative: Mr. Charles J. Williams, 1815 Front Street, Scotch Plains, N.J. 07076. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets, plastic resin, plastic film and plastic articles*, (except in bulk), over irregular routes, from Newark and Passaic, N.J., and Hickory, N.C., to points in Arizona, California, Colorado, Kansas, Nebraska, Nevada, New Mexico, Oklahoma, Texas and Utah restricted to a transportation service to be performed under a continuing contract or contracts with Pantasote Company of New York, Inc., division of The Pantasote Company for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pantasote Company of New York, Inc. (Division of Pantasote Company) 25 Jefferson Street, Passaic, N.J. 07055. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, 9 Clinton Street, Newark, N.J. 07102.

No. MC 135384 (Sub-No. 24TA), filed May 27, 1977. Applicant: SPECIALIZED TRUCK SERVICE, INC., Highway 81 and I-75, McDonough, Ga. 30253. Applicant's representative: Frank D. Hall, 3384 Peachtree Rd., N.E., Suite 713, Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising material and empty malt beverage containers*, from Fort Worth, Tex., to Dothan, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Better Brands, Inc., 250 Old Cowart's Rd., Dothan, Ala., 36301. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Rm. 546, Atlanta, Ga. 30309.

No. MC 135384 (Sub-No. 25TA), filed May 27, 1977. Applicant: SPECIALIZED TRUCK SERVICE, INC., Highway 81 and I-75, McDonough, Ga. 30253. Applicant's representative: Frank D. Hall, 3384 Peachtree Road, N.E., Suite 713, Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, related advertising material and empty malt beverage containers*, from Ft. Worth, Tex., to Macon, Albany and Valdosta, Ga., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Macon Beer Co. of Macon, Ga., Dixie Beer Co. of Albany & Valdosta, Ga. 202 7th Street, P.O. Box 226, Macon, Ga. 31201. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree Street, N.W., Room 546, Atlanta, Ga. 30309.

No. MC 135633 (Sub-No. 11TA), filed May 19, 1977. Applicant: NATIONWIDE AUTO TRANSPORTERS, INC., 2175 Lemoine Avenue, Fort Lee, N.J. 07024. Applicant's representative: Mr. David L. Steinhagen, 333 Chipili Drive, Northbrook, Ill. 60062. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buses* in driveaway service, between Fort Valley, Ga.; Buena Vista, Va.; Mt. Pleasant, Iowa; and the International boundary line, between the United States and Canada, at Buffalo, Niagra Falls, and Champlain, N.Y., and Detroit, Mich., on the one hand, and, on the other, points in the United States, for 180 days. Supporting shipper: Bluebird Body Company, P.O. Box 937, Ft. Valley, Ga. 31030. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 138126 (Sub-No. 16TA), filed May 20, 1977. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., Old Denton Road, P.O. Box 47, Federalsburg, Md. 21632. Applicant's representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen waffles*, from Decatur, Ind., to Syracuse, N.Y., for 180 days. Supporting shipper: Mr. James E. Chambers, Traffic & Distribution Mgr., Roman Meal Company,

P.O. Box 11126, Tacoma, Wash. 98411. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814 B Federal Building, Baltimore, Md. 21201.

No. MC 138512 (Sub-No. 18TA), filed May 24, 1977. Applicant: ROLAND'S TRANSPORTATION SERVICES, INC., d.b.a. WISCONSIN PROVISIONS EXPRESS, 33833 E. Layton Avenue, Cudahy, Wis. 53110. Applicant's representative: Allan J. Morrison (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese foods, and synthetic cheese* (except commodities in bulk), from Logan, Utah to points in New York, New Jersey, Massachusetts, Connecticut, Maryland and Pennsylvania for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): L. D. Schreiber Cheese Co., Inc., P.O. Box 610, Green Bay, Wis. 54305. (Robert Buchberger). Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 138777 (Sub-No. 2TA), filed May 27, 1977. Applicant: FETZ INCORPORATED, 2784 Woodwin Road, Doraville, Ga. 30340. Applicant's representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer*, in bulk, in tank vehicles, from the facilities of C. F. Industries, Inc. (Chattanooga Nitrogen Complex) at Harrison, Tenn., to all points in the states of Alabama, Georgia and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Rm. 546, Atlanta, Ga. 30309.

No. MC 140511 (Sub-No. 4TA), filed May 27, 1977. Applicant: AUTOLOG CORPORATION, 319 West 101 Street, New York, N.Y. 10025. Applicant's representative: Larsh B. Mewhinney, 235 Mamaroneck Avenue, White Plains, N.Y. 10605. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Used passenger automobiles*, vans and pick-up trucks, up to three quarter ton and (2) baggage, sporting equipment, personal effects of the owners thereof when moving with used passenger automobiles, vans and pick-up trucks in secondary movements, in truckaway service, between all points in the New York City Commercial Zone and the states of Virginia, North Carolina, South Carolina, Georgia, Florida, Connecticut and Massachusetts for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. SUPPORTING SHIPPER(S): There are seven statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., copies of which may be examined at the field office named below. Send protests to: Maria B. Kejss Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 141575 (Sub-No. 3TA), filed May 20, 1977. Applicant: TFS, INC., East Highway 136, Oxford, Nebr. 68967. Applicant's representative: A. J. Swanson, Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cheese* and (2) *cardboard boxes;* (1) from Oxford, Nebr., to the commercial zone of Rochester, Minn., and (2) from points in the commercial zones of Minneapolis, Minn., and Sioux City, Iowa, to Oxford, Nebr., under a continuing contract, or contracts with Oxford Cheese Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Lee Jackson, President, Oxford Cheese Corporation, Highway 46, Oxford, Nebr. 68967. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 141806 (Sub-No. 1TA), filed May 20, 1977. Applicant: Charles Kraft and Anthony Valvo, doing business as VEE-KAY CARTAGE COMPANY, 2167 N. Melvina Avenue, Chicago, Ill. 60639. Applicant's representative: Philip A. Lee, 120 W. Madison Street, Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Molten metal* in fire brick lined tank vehicles, built especially for transportation of molten metals, from Chicago, Ill., to Madison, Sheboygan, Milwaukee, Fond du Lac and Grafton, Wis., under a continuing contract or contracts with Apex International Alloys, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Apex International Alloys, Inc., Vincent J. Arizzi, Distribution Manager, 2340 Des Plaines Avenue, Des Plaines, Ill. 60018. Send protests to: Transportation Assistant Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, Ill. 60604.

No. MC 142059 (Sub No. 8TA), filed May 18, 1977. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, P.O. Box 911, Joliet, Ill. 60436. Applicant's representative: Jack Riley (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic foam articles*, from Belvidere, Ill., to points in Alabama, Arkansas, Georgia, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Pennsylvania, Tennessee and Wisconsin, for 180 days. Supporting shipper: Anache Foam Products Company, Larry Voiles, Traffic Manager & Customer Service Mgr., 1005 McKinley Avenue, Belvidere, Ill. 61008. Send protests to: Transportation Assistant Patricia, A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn St., Rm. 1386, Chicago, Ill. 60604.

No. MC 143000 (Sub-No. 4TA), filed March 26, 1977. Applicant: THE HIGH PLAINS GRAIN COMPANY, INC., East Highway 40, P.O. Box 7, Hays, Kans. 67601. Applicant's representative: Erle W. Francis, Suite 719, 700 Kansas Avenue, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed*, in bulk and bags, in self-unloading equipment with auger discharger, from the facilities of Cargill, Inc. at McPherson, Kans.; Kansas City, Kans. and Springdale, Ark., to the facilities of Farmers Hybrid Research Ranch, Division of Monsanto Chemical Company at or near Warner, Okla., for 180 days. Applicant states it does not intend to tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cargill, Inc., P.O. Box 9300, Minneapolis, Minn. 55440. Send protests to: Thomas P. O'Hara, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 147 Federal Bldg. and U.S. Courthouse, 444 S. E. Quincy, Topeka, Kans. 66683.

No. MC 143239 (Sub-No. 1TA), filed May 25, 1977. Applicant: JAMOUR, INC., d.b.a., QUICK METROPOLITAN MESSENGER SERVICE, 28 South 40th Street, Philadelphia, Pa. 19104. Applicant's representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, Pa. 19102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Business reports, records and documents*, from the facilities of Datacomp Corporation in Philadelphia, Pa., to the facilities of Bell Telephone Company of New Jersey, in N.J., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Datacomp Corporation, 211 South Broad Street, Philadelphia, Pa. 19107. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadephia, Pa. 19106.

No. MC 143279TA, filed May 17, 1977. Applicant: SHEETS TRUCKING COMPANY, INC., 128 S. Mine LaMatte Avenue, Fredericktown, Mo. 63645. Applicant's representative: William C. Sheets (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, wood products and wood pallets* to and from points within Wayne and Madison Counties, Mo., on the one hand, and to and from all points within the States of Illinois, Indiana and Wisconsin on the other hand, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Boushie Wood Products, Route No.

1, Arcadia, Mo. 63621, Cedar Bottom Wood Products, Route No. 1, Fredericktown, Mo. 63645, Edison Pallet & Wood Products, P.O. Box 195, Winfield, Ill. 60190. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Rm. 1465, 210 N. 12th St., St. Louis, Mo. 63101.

No. MC 143280 (Sub-No. 1TA), filed April 29, 1977. Applicant: SAFE TRANSPORTATION COMPANY, 1975 Oakcrest Avenue, Roseville, Minn. 55113. Applicant's representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, glass container closures and glass container packaging materials, and cartons*, from Shakopee, Minn., to Milwaukee, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midland Glass Company, Valley Industrial Park, Shakopee, Minn. 55379. Send protests to: Mrs. Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 143301 (Sub-No. 1TA), filed May 24, 1977. Applicant: SPAULDIN ALLISON, d/b/a, ALLISON TRUCKING, Route 2, Box 162, Horse Shoe, N.C. 28742. Applicant's representative: George W. Clapp, 109 Hartsville Street, P.O. Box 836, Taylors, S.C. 29687. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in bulk, in dump vehicles, from points in Bell County, Ky., and Campbell and Morgan Counties, Tenn., to the plantsite of Olin Corporation at or near Pisgah Forest, N.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Olin Corporation, P.O. Box 200, Pisgah Forest, N.C. 28768. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, Mart Office Buliding, Room CC-516, 800 Briar Creek Road, Charlotte, N.C. 28205.

PASSENGERS APPLICATION

No. MC 107815 (Sub-No. 9TA), filed May 19, 1977. Applicant: IOWA COACHES, INCORPORATED, 1180 E. Rossevelt Ext. Dubuque, Iowa 52001. Applicant's representative: Steven C. Schoenebaum 1200 Register and Tribune Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and and their baggages*, in the same vehicle as paggengers, in special operations, in round trip, sightseeing, and pleasure tours, beginning and ending at Waterloo and Cedar Falls, Iowa, and extending to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Mrs. Harold Trupp, 1155 Forest Avenue, Waterloo, Iowa 50701, Waterloo Eagles Club, 202 East First St., Waterloo, Iowa 50701. Mrs. Walter Figi, 415 Home Park Boulevard, Waterloo, Iowa 50701. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-16924 Filed 6-13-77;8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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1

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 3:00 p.m. June 14, 1977.

PLACE: 2033 K Street, NW., Washington, D.C., Office of the Chairman.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial matter.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-638-77 Filed 6-9-77;3:55 pm]

2

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, June 16, 1977 at 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

I. Future meetings.

II. Correction and approval of minutes.

III. Certifications:

A. Certification Under 26 U.S.C. Section 9008 re Democratic National Convention Committee.

B. Certification for Presidential Primary Matching Funds The Honorable Jerry Brown.

IV. Advisory Opinion 1977-23. Commission Memorandum No. 1343 ADR 1976-104. Commission Memorandum No. 1346.

V. Proposed Rulemaking:

A. Communications off the record of Rulemaking Proceedings. Commission Memorandum No. 1344.

B. Commission Memorandum No. 1342 re Memorandum No. 1317.

C. Proposal for Rulemaking Hearings on Sponsorship and Funding of Candidate Debates.

VI. Pending Legislation.

VII. Appropriations and budget.

VIII. Agency job classifications.

IX. Liaison with other Federal Agencies.

X. Routine administrative matters.

PORTIONS CLOSED TO THE PUBLIC

XI. Executive Session:

A. Compliance. Audit Report No. 19.

B. Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, phone 202-523-4065.

[S-636-77 Filed 6-9-77;3:55 pm]

3

AGENCY HOLDING THE MEETING: Federal Home Loan Mortgage Corporation.

TIME AND DATE: 2:00 p.m., June 16, 1977.

PLACE: 320 First Street, N.W., Room 630, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Henry Judy, 202-624-7107.

MATTERS TO BE CONSIDERED:

Consideration of Status Report on Corporation Move to New FHLBB Building.

Consideration of Application by Pennsylvania Mortgage Insurance Company, Fort Washington, Pennsylvania, to become an Eligible Mortgage Insurer.

No. 33, June 9, 1977.

RONALD A. SNIDER,
Assistant Secretary.

[S-639-77 Filed 6-9-77;3:55 p.m.]

4

AGENCY HOLDING THE MEETING: Federal Power Commission.

JUNE 9, 1977.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 8552B:

TIME AND DATE: June 16, 1977, 2:00 p.m.

PLACE: 825 North Capitol Street.

STATUS: Open.

MATTERS TO BE CONSIDERED: (Agenda)

*Note.—Items listed on the agenda may deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secertary, telephone 202-275-4155.

This is a list of the matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information Room 1000.

POWER AGENDA 763ATH MEETING—JUNE 16, 1977 REGULAR MEETING—PART I (2:00 P.M.)

P-1 Docket No. ER77-378, Montana Power Company.

P-2 Docket No. ER77-253, Niagara Mohawk Power Corporation.

P-3 Docket No. E-9306, Nevada Power Company.

P-4 Docket No. E-7671, Blandin Paper Company, et al.

P-5 Docket No. ER76-415, Virginia Electric and Power Company.

P-6 Docket No. ER76-739, Kentucky-Indiana Power Pool Agreement.

P-7 Project No. 2146, Alabama Power Company, Walter Bouldin Dam.

P-8 Project No. 2579, Indiana and Michigan Electric Company.

P-9 Project No. 2284, Central Maine Power Company.

GAS AGENDA 763ATH MEETING—JUNE 16, 1977 REGULAR MEETING—PART I

G-1 Docket No. RP76-103, Public Service Company of North Carolina, Inc.

G-2 Exxon Corporation, FPC Gas Rate Schedule Nos. 477 and 504 the Louisiana Land and Exploration Company, FPC Gas Rate Schedule Nos. 7 and 10.

G-3 Docket No. CS74-370, Robert L. Haynie.

G-4 Docket Nos. CP74-316, CP75-182, CP75-195. Michigan Wisconsin Pipe Line Company. Docket Nos. CP72-279, CP75-274, Natural Gas Pipeline Company of America, Docket No. CP74-317, Great Lakes Gas Transmission Company, Docket Nos. CP75-23, Northern Natural Gas Company, Docket Nos. CP75-199, CP75-200, Michigan Consolidated Gas Company.

G-5 Docket No. CP74-160, CP74-207, Pacific Indonesia LNG Company, Docket No. CP75-83-3, Western LNG Terminal Associates.

G-6 Docket Nos. CP76-206, CP76-335, CP63-188 (Phase II), Cities Service Gas Company.

G-7 Docket No. CP77-21, Tennessee Gas Pipeline Company, Columbia Gulf Transmission Company and Southern Natural Gas Company.

G-8 Docket No. G-4907, Dorchester Gas Producing Company, Docket No. CP76-431, Natural Gas Pipeline Company of America.

G-9 Docket No. CP76-450, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, Michigan Wisconsin Pipe Line Company.

POWER AGENDA 7634TH MEETING—JUNE 16, 1977 REGULAR MEETING—PART II

CP-1 Docket No. ER77-383, Appalachian Power Company, Ohio Power Company, Wheeling Electric Company, Monongahela Power Company and West Penn Company.
CP-2 Docket No. ER77-380, Central Illinois Public Service Company.
CP-3 Docket No. ER77-386, Upper Peninsula Power Company.
CP-4 Docket No. ER77-376, Montaup Electric Company.
CP-5 Docket No. ER77-168, Southwestern Electric Power Company.
CP-6 Docket No. ES77-33, Upper Peninsula Generating Company.
CP-7 Bureau of Land Management, Sacramento, California (CA-3124).
CP-8 Project No. 287, North Counties Hydro-Electric Company.
CP-9 Docket No. DA-1127—California Bureau of Indian Affairs, Lands Withdrawn in Power Site Classification No. 115.
CP-10 Docket No. DA-114—Alaska Bureau of Indian Affairs, Bristol Bay Native Corporation, Lands Withdrawn in Power Site Reserve No. 485 and Power Site Classification No. 463.
CP-11 Docket No. ID-1584, Anthony E. Wallace.
CP-12 Docket No. ID-1810, Robert S. Bromage.
CP-13 Docket No. ID-1582, Paul H. Mehrtens.
CP-14 Docket No. ID-1809, Herbert W. Sears.
CP-15 (A) Docket No. E-9587, Upper Peninsula Power Company, Upper Peninsula Generating Company.
(B) Docket Nos. ER76-747, ER76-748, ER76-749, ER76-750, ER76-751, ER76-752 and ER76-753, West Texas Utilities Company.
(C) Docket No. ER77-356, Florida Power and Light Company.

MISCELLANEOUS AGENDA 7634TH MEETING—JUNE 16, 1977 REGULAR MEETING—PART II

CM-1 (A) Methow River Basin in Washington.
(B) Green Subregion Ohio River Basin Commission's Comprehensive Joint Plan.
(C) Kentucky-Licking Subregion Ohio River Basin Commission's Comprehensive Coordinated Joint Plan.
(D) The Missouri Basin Water Resources Plan.

GAS AGENDA 7634TH MEETING—JUNE 16, 1977 REGULAR MEETING—PART II

CG-1 Docket No. RP77-97, El Paso Natural Gas Company.
CG-2 Docket No. RP76-50, Michigan Wisconsin Pipe Line Company.
CG-3 Docket Nos. CI61-820, et al., Gulf Oil Corporation, et al.
CG-4 Docket No. CP77-337, Algonquin Gas Transmission Company.
CG-5 Docket No. CP76-127, Transcontinental Gas Pipe Line Corporation.
CG-6 Docket No. CP77-335, Colorado Interstate Gas Company.
CG-7 Docket No. CP77-306, Cities Service Gas Company.
CG-8 Docket No. CP75-71, Natural Gas Pipeline Company of America, Transwestern Pipeline Company.
CG-9 Docket No. CP66-180, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CG-10 Docket No. RP76-137, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CG-11 Docket No. CS71-331, et al., McRoran Exploration Co., Burmont Company and Pelmont International, Inc., et al.

KENNETH F. PLUMB,
Secretary.

[S-635-77 Filed 6-9-77;3:55 pm]

5

AGENCY HOLDING THE MEETING: International Trade Commission.

[USITC SE-77-37A]

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: S-572-77, June 7, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., June 9, 1977.

CHANGES IN THE MEETING: Additional item added to the agenda as follows:

8. Consideration of action jacket ID-77-25—institution of Investigation TA-203-3 (Stainless Steel and Alloy Tool Steel).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-637-77 Filed 6-9-77;3:55 pm]

6

AGENCY HOLDING THE MEETING: National Science Board.

TIME AND DATE: June 23-24, 1977.

PLACE: New Mexico Institute of Mining and Technology, Room 26, Workman Hall, Socorro, New Mexico.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

MATTERS TO BE CONSIDERED: Portions open to the public: (June 23, 8 to 9:45 a.m. and 4 to 5:30 p.m.; and June 24, 10:30 a.m. to 12:30 p.m.

1. Reports—Chairman, Director, and Board Committees.
2. NSF Advisory Groups—Reports on Meetings.
3. Proposed Revision of Government in the Sunshine Act Regulations.
4. Introduction to Planning Environment Review.
5. Reports of Task Forces.

Portions closed to the public:

1. Minutes—Closed Session—27th Annual (190th) Meeting.
2. Report of Ad Hoc Committee on NSF Staff and NSB nominees.

CONTACT PERSON FOR MORE INFORMATION:

Miss Vernice Anderson, 202-632-5840.

[S-645-77 Filed 6-10-77;9:48 am]

7

AGENCY HOLDING THE MEETING: National Transportation Safety Board.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 29617, June 9, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 16, 1977, 2:30 p.m. (NM-77-16a).

CHANGE IN THE MEETING: The following agenda item has been added:

Discussion.—Internal Personnel Matter, including Relationship with Board Members and Staff.

[S-642-77 Filed 6-9-77;4:31 pm]

8

AGENCY HOLDING THE MEETING: Railroad Retirement Board.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 9, 1977 (42 FR 29617).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., June 14, 1977.

CHANGES IN THE MEETING: Additional item to be considered at the portion of the meeting closed to the public:

(9) Appeal to the Board of denial of annuity application, Joe B. Garee.

[S-633-77 Filed 6-9-77;2:19 pm]

9

AGENCY HOLDING THE MEETING: Railroad Retirement Board.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 9, 1977 (42 FR 29617)

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., June 14, 1977.

CHANGES IN THE MEETING: Additional items to be considered at the portion of the meeting open to the public:

(10) Payment of annuities to non-dependent husbands and widowers.
(11) Revised planning for implementing zero-base budgeting in the Board.

[S-643-77 Filed 6-10-77;9:24 am]

10

AGENCY HOLDING THE MEETING: Securities and Exchange Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 2, 1977, 42 FR 28222.

PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., June 9, 1977.

STATUS: Closed meeting.

CHANGES IN THE MEETING: Additional litigation matter considered. Chairman Williams, Commissioners Loomis, Evans, and Pollack determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

JUNE 9, 1977.

[S-641-77 Filed 6-9-77;4:00 pm]

11

AGENCY HOLDING THE MEETING: Securities and Exchange Commission.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the

week of June 13, 1977, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Tuesday, June 14, 1977, at 10 a.m. Open meetings will be held on Tuesday, June 14, 1977, at 2:30 p.m. and on Thursday, June 16, 1977, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be so considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Pollack, and Evans voted to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 14, 1977, will be:

Formal Orders of Investigation.
Institution of Injunctive Actions.
Institution of Administrative Proceedings.
Settlement of Administrative Proceedings.
Simultaneous institution and settlement of injunctive actions and/or administrative proceedings.
Other litigation matters.
Referral of investigative files to Federal, State or Self Regulatory authorities.
Regulatory matters arising from or bearing enforcement implications.
Consideration of the transmittal of comments to another Federal agency.
Consideration of a petition to lift a temporary suspension pursuant to Rule 2(e).

The subject matter of the open meeting scheduled for Tuesday, June 14, 1977, will be:

Oral argument of appeals of Lamb Brothers, Inc. and Clyde C. Lamb, Jr. from an initial decision of the Commission's Administrative Law Judge (File No. 3-4706) and from adverse decision of the Board of Governors of the National Association of Securities Dealers, Inc. (File No. 3-4789).

The subject matter of the open meeting scheduled for Thursday, June 16, 1977, will be:

1. Consideration by the Commission of publication of Guide 4 to the Exchange Act Guidelines; which would permit the filing of integrated annual or quarterly reports to shareholders when certain conditions are met in satisfaction with the reporting requirements.

2. Consideration of proposal to adopt Rule 24e-2; which would provide an optional method for calculation of registration fees by open-end investment companies and unit investment trusts. The rule has the effect of requiring registration fees for only those shares or units registered in excess of the number redeemed or repurchased in the previous fiscal year.

3. Consideration by the Commission of request for the issuance of a declaratory order under the Administrative Procedure Act with respect to the status of certain investment companies (the "Funds"), if mergers are attempted through direct exchange offers by the Funds to shareholders in investment companies whose assets are sought to be acquired by the Funds.

4. Recommendation concerning certain requests by Banner Redi-Resources Trust regarding a proposed distribution arrangement.

5. Consideration by the Commission of adoption of Rules 17Ad-1 through 17Ad-7, prescribing, among other things, the times in which registered transfer agents must turnabout transfer items and respond to written inquiries.

6. Consideration of:

(a) Applications pursuant to Section 12(f)(1)(C) by the Philadelphia Stock Exchange and the Pacific Stock Exchange for unlisted trading privileges in certain securities traded over-the-counter only;

(b) Request by Pacific Resources, Inc. for withdrawal from listing and registration on the PSE;

(c) Proposed rule changes by the Philadelphia Stock Exchange and the Pacific Stock Exchange to exempt from their off-board trading restrictions those securities which are not listed and registered on any national securities exchange but are admitted to unlisted trading on those exchanges pursuant to section 12(f)(1)(C).

7. Consideration by the Commission of proposed rule change concerning SR-CBOE-77-6, which deals with procedures for the appointment of Board Brokers and assessment of fees for member's use of board broker services. This proposed rule change would (1) provide for the award of Board Broker appointments on the basis of competitive bidding, (2) provide for compensation of Board Brokers by the exchange and (3) empower the CBOE to set and collect fees from members for services performed by Board Brokers.

8. Consideration by the Commission of adoption of Rule 19d-1, 2, and 3, and 19h-1 under the Securities Exchange Act which would prescribe form and contents of notices to be filed with the Commission by self-regulatory organizations to discipline their members and their officials and employees; the admission to or continuance in, membership of persons who are, or members who are associated with, disqualified persons; and procedures for stays of disciplinary sanctions or summary suspensions and appeals to the Commission from self-regulatory organizations' imposed disciplinary sanctions.

9. Consideration by the Commission concerning the two rating requirement qualifying commercial paper for preferential haircut treatment pursuant to Rule 15c3-1(c)(2)(vi)(E). Specifically, the Commission will consider the appropriateness of the "two ratings" presently required by the Rule for the purposes of qualifying short term commercial paper of high quality for the reduced haircut treatment available under that provision and the existing temporary qualified suspension of the provisions of the Rule.

10. Consideration by the Commission concerning the solicitation of comments on a number of issues related to (1) accounting practices required to be developed for the reporting of energy data to the Federal Energy Administrator by domestic producers of crude oil or natural gas pursuant to Title B of Pub. L. 94-163, the Energy Policy and Conservation Act, and (2) disclosure of financial and operating data by registrants engaged in the oil and gas industry.

11. Affirmation of Duty Officer's approval of transmission to the Office of Management and Budget of a letter of comment expressing Commission views with respect to H.R. 1180, a bill which would place certain reporting requirements upon individuals who engage in lobbying communications with federal officials.

JUNE 9, 1977.

[S-640-77 Filed 6-9-77;3:55 pm]

12

AGENCY HOLDING THE MEETING: Securities and Exchange Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 2, 1977, 42 FR 28222.

PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., June 9, 1977.

CHANGES IN THE MEETING: Addition of the following item to the open meeting:

1. Consideration by the Commission of the Division of Market Regulation's request for authorization to respond to the American Stock Exchange, Inc. regarding the latter's request that the Commission reconsider its decision to institute disapproval proceedings in respect of the Exchange's alternate listing standards proposal.

Chairman Williams, Commissioners Loomis, Evans, and Pollack determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

JUNE 8, 1977.

[S-634-77 Filed 6-9-77;2:19 pm]

13

AGENCY HOLDING THE MEETING: Federal Trade Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 42 F.R. 29616, June 9, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, June 14, 1977.

CHANGES IN THE MEETING: Addition to agenda:

(2) Consideration of staff recommendations regarding authorization of compulsory process and 6(b) Special Reports in a nonpublic investigation.

[S-646-77 Filed 6-10-77;10:20 am]

14

AGENCY HOLDING THE MEETING: Indian Claims Commission.

TIME AND DATE: 10:15 a.m., June 22, 1977.

PLACE: Room 60, 1730 K Street, NW., Washington, D.C.

STATUS: Open to the Public.

Docket 22-C, *Lipan Apache* (two items).

Docket 247, *Seminole*, and Docket 277, *Creek*.

Docket 272, *Creek*.

FOR MORE INFORMATION:

David H. Bigelow, Executive Director, Room 640, 1730 K Street, NW., Washington, D.C. 20006. Tel. 202-653-6184.

[S-648-77 Filed 6-10-77;11:17 am]

15

AGENCY HOLDING THE MEETING: United State International Trade Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: S-572-77 (6/7/77) 42 FR 29140.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., June 16, 1977.

CHANGES IN THE MEETING: Additional item added to the agenda as follows:

10. Consideration of Investigation 332-83 (Customs Oversight)—see staff report distributed June 8, 1977.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-647-77 Filed 6-10-77;11:04 am]

16

AGENCY HOLDING THE MEETING: Overseas Private Investment Corporation.

TIME AND DATE: Meeting of the OPIC Board of Directors; Tuesday June 14, 1977 at 9:00 a.m.

PLACE: Offices of the Corporation, 7th Floor Board Room, 1129, 20th Street NW., Washington, D.C.

STATUS: The meeting will be closed to the public.

MATTERS TO BE DISCUSSED:

1. Policy and Legislative Recommendations to President Carter.

2. Insurance of African Project.

[S-651-77 Filed 6-10-77;12:19 pm]

17

AGENCY HOLDING THE MEETING: Postal Rate Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice sent to FEDERAL REGISTER on June 6, 1977. Published June 10, 1977 (42 FR 30024).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m. Wednesday, June 8, 1977.

STATUS: Part of the meeting is open; part is closed.

CHANGES IN THE MEETING: Additional matters to be considered at the portion of the meeting open to the public:

6. Two draft letters to Chairman Robert N. C. Nix, Committee on Post Office and Civil Service, one commenting on H.R. 2733, the other on H.R. 3928.

Further requests for information should be directed to Mr. Ned Callan, Information Officer for the Postal Rate Commission by calling 202-254-5614.

[S-649-77 Filed 6-10-77;11:18 am]

18

AGENCY HOLDING THE MEETING: Securities and Exchange Commission.

TIME AND DATE: June 9, 1977, 5 p.m.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

STATUS: Closed meeting.

The Commission met at 5 p.m. on Thursday, June 9, 1977, to consider a litigation matter.

Chairman Williams, Commissioners Loomis, Evans, and Pollack determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

JUNE 10, 1977.

[S-650-77 Filed 6-10-77;11:18 am]

19

AGENCY HOLDING MEETING: Civil Service Commission.

TIME AND DATE OF MEETING: 9 a.m., June 21, 1977.

PLACE: Commisisoners' Meeting Room, Room 5H09 (fifth floor), 1900 E Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Policy with regard to regularly-scheduled open meetings.

(2) Creation of Policy Analysis Group and Staff Policy Advisory Committee.

(3) Division of leadership and oversight responsibilities among the Commissioners.

(4) Continuation, modification, or revocation of Department of Defense Overseas Dependent Hiring Authority (Schedule A).

(5) Recommendations of the Task Force on Merit Staffing Review Recommendations. (It is anticipated that consideration of this agenda item will continue to the next meeting proposed to be held on June 28, 1977.)

CONTACT PERSON FOR MORE INFORMATION:

Georgia Metropulos, Office of the Executive Assistant to the Commissioners (202-632-5556).

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

[S-657-77 Filed 6-13-77;10:02]

federal register

TUESDAY, JUNE 14, 1977

PART II



COMMODITY FUTURES TRADING COMMISSION

■

EXCHANGE DISCIPLINARY OR OTHER ADVERSE ACTION

Procedures and Standards for Commission Review

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 9]

COMMISSION REVIEW OF EXCHANGE DISCIPLINARY OR OTHER ADVERSE ACTION

Proposed Procedures and Standards

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission proposes to adopt rules to implement section 8c of the Commodity Exchange Act, as amended, 7 U.S.C. 12c (Supp. V, 1975), which grants the Commission broad power to review exchange disciplinary and other adverse action upon application of the person who is the subject of the exchange action or upon the Commission's own motion. The proposed rules set forth the procedures and the standards under which review would be instituted and conducted in those cases where a person applies to the Commission for review.

DATES: Comments must be received on or before: July 14, 1977. Proposed effective date: September 1, 1977.

ADDRESS: Comments on the proposal should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT:

Dennis Carluzzo or Loren Hershey, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-9880.

SUPPLEMENTARY INFORMATION: The proposed rules are divided into four subparts. Subpart A includes various general provisions and definitions applicable to the rules. Subpart B prescribes the form and manner of the notice which an exchange must provide to the Commission and to a person who is the subject of an exchange disciplinary action. Section 8c(1) of the Act provides that:

(A) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(B) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. Otherwise the notice and reasons shall be kept confidential.

The Commission has reviewed numerous notices of disciplinary action which it has received under section 8(c)(1)(B). Based on that review, the Commission has found that some of the notices have failed to provide information sufficient to determine the reasons for the exchange action. Also, inquiries from contract markets and from persons who have been disciplined indicate that the Commission should clarify the standards under which confidentiality of the notice should be maintained.

Subpart B sets forth the information required to be set forth in the notice, which the Commission believes adequate concerning the exchange's disciplinary action. It would also delay, except in specified circumstances, the imposition of exchange disciplinary action for ten days after the notice of disciplinary action is sent to the Commission in order to permit the person disciplined sufficient time to apply to the Commission for a stay of the disciplinary action. Subpart B further defines the scope of the exchange's responsibility to maintain the confidentiality of the notice and reasons of the disciplinary action.

Sections 8c(2) and (3) of the Act provide that:

(2) The Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(3) The Commission may affirm, modify, set aside, or remand any exchange dicision it reviews pursuant to subsection (2), after a determination on the record whether the action of the exchange was in accordance with the policies of this Act. Subject to judicial review, any order of the Commission entered pursuant to subsection (2) shall govern the exchange, in its further treatment of the matter.

Subparts C and D of the proposed rules establish the procedure for Commission review of exchange action upon application of an affected person. The procedure is designed (1) to provide the applicant with an adequate opportunity to present the reasons that he feels that the specific exchange action does not accord with the policies of the Act; (2) to establish a mechanism for the prompt review of exchange action; and (3) to ensure that the Commission will have before it all relevant information that is necessary for it to review the exchange action. In this regard, subpart D provides that the Commission may remand the action to the exchange for further proceedings or to adduce additional information. Subpart D also sets forth the standards which the Commission will use to review the exchange decision.

The Commission has an obligation to ensure that an exchange is fulfilling its self-regulatory responsibilities in its imposition of disciplinary sanctions. If the Commission has reason to believe that an exchange disciplinary action may not have been in accordance with the policies of the Act, the Commission may undertake review of that exchange action on its own motion. However, the Commission is not proposing at this time to adopt specific procedures to govern review on its own motion.

Interested persons are invited to participate in this rulemaking procedure by submitting written comments to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Attn: Secretariat. All comments submitted on or before July 14, 1977 will be considered by the Commission before taking action on the proposed rules. All comments submitted to the Commission will be available for public inspection.

Discussion of the Provisions of the Proposed Rules

SUBPART A—GENERAL PROVISIONS

Proposed § 9.1 sets forth the scope and purpose of the rules. Proposed § 9.2 defines various terms used in the proposed rules. It defines, among other terms, "disciplinary action" as any suspension, expulsion or other discipline imposed on any member of an exchange by that exchange or any action by an exchange which denies access to the exchange to any person.[1] A minor sanction imposed for violation of exchange rules of decorum and similar rules is excluded from the definition of disciplinary action. "A disciplinary proceeding" is defined as any formal or informal proceeding by an exchange which results in a disciplinary action. "Exchange" means any contract market designated as such by the Commission. "Member of an exchange" includes both the person who is admitted to exchange membership or has been granted membership privileges and employees, Officers and other affiliates of that person. A "party" includes both the person who has been the subject of a disciplinary action or other adverse action by an exchange and that exchange. "Record' 'is defined basically to include all evidentiary and other documents compiled by an exchange in the course of any proceeding resulting in a disciplinary or other adverse action, including the record which the exchange is required to maintain in accordance with Commission regulations. Currently, regulation 1.51(b), 17 CFR 1.51(b) (1976) sets forth these requirements insofar as exchange disciplinary actions are concerned. However, the Commission is proposing a new Part 8 of its regulations which would substantially revise those requirements. See 42 FR 11142 (February 25, 1977).

Proposed § 9.3 incorporates by reference certain provisions of the Commission's rules of practice.[2]

[1] A denial of membership in an exchange is a denial of access within the meaning of section 8c and is therefore governed by the proposed rules. The privileges of exchange membership that an applicant is denied are precisely the privileges which a member losses when suspended or expelled, with which section 8c is fundamentally concerned. Unless the context indicates the contrary, disciplinary action is used in this notice to include a denial of access to the exchange.

[2] 17 CFR Part 10 (1976). These provisions include regulations governing the Commission's business address (§ 10.4), the computation of time (§ 10.5), changes in the time permitted for filing (§ 10.40), the date of entry of orders (§ 10.7), ex parte communications (§ 10.10), appearance in proceedings (§ 10.11), and the service and filing of documents (§ 10.12 (a), (b), (c), (d), (e)(1)-(e)4), (e)(6), (f)).

Proposed § 9.4 provides that, if either party fails to file any document or make any appearance which would be required by the proposed rules, the Commission may dismiss the proceeding before it, or, based on the record before it, affirm, modify or set aside the exchange decision or remand the matter for further proceedings before the exchange, as it deems appropriate.

Proposed § 9.5 deals with settlement of review proceedings which have been sought or instituted and permits the parties to propose offers of settlement which shall be filed with the Commission. The section prescribes the various matters which must be included in any offer of settlement. The Commission may, in its discretion, accept or reject an offer of settlement. If the Commission accepts the offer, the proceeding before the Commission would terminate as to all parties. If the Commission should reject an offer of settlement, the offer of settlement will be deemed withdrawn and will not constitute either an admission or waiver in the proceeding before the Commission. A rejected offer may not be used in any manner in the Commission's review or before the exchange if the proceeding is remanded to it.

Proposed § 9.6 provides that in a particular case the Commission may waive any of the proposed rules if it determines that no party will be prejudiced and that the ends of justice will be served.

SUBPART B—NOTICE OF DISCIPLINARY PROCEEDING

As noted above, section 8c(1)(A) of the Act requires that any exchange disciplinary action shall be taken solely in accordance with the rules of the exchange. Section 8c(1)(B) empowers the Commission to prescribe the form and manner of the written notice which the exchange must provide within thirty days to the person who is the subject of exchange disciplinary action and to the Commission.

So that the Commission and the person who is the subject of the exchange disciplinary action can be fully apprised of the nature of and the reasons for the exchange action, proposed § 9.11 requires that the written notice include the name of the person against whom the disciplinary action was taken; the reasons for the exchange action, together with an enumeration of the rules which the person who was subject to the disciplinary action was charged with having violated; a statement of the conclusions and finding made by the exchange with regard to each rule violation, and the terms of the disciplinary action imposed on the person. The notice should state the specific underlying violations, e.g., unlawful trading, as well as the section number of the rule.[2] The exchange must provide notice to the person who was the subject of the disciplinary action either in person or by mail at his last known address. Notice to the Commission may be delivered in person or by mail to the Commission's principal office in Washington, D.C. to the attention of the Division of Trading and Markets.

Information contained in the written notice may require clarification. Accordingly, proposed § 9.11(c) enables the Division of Trading and Markets to request that the exchange furnish information in addition to that contained in the written notice, which may include the record and a brief statement of the evidence and testimony adduced to support the exchange's finding that a rule or rules of the exchange have been violated. If the Division requests additional information, the exchange must provide such information within thirty days of the request. The exchange must also provide a copy of the additional information sent to the Commission to the person who was the subject of the disciplinary action.

Proposed § 9.11(d) requires that both the written notice and the additional information are to be certified as true and correct by a duly authorized officer or agent of the exchange who has knowledge of the disciplinary action. This provision is necessary to ensure that the exchange will review carefully the notices and information required to be furnished under Section 8c and the proposed rules.

Section 8c(1)(B) of the Act requires that the exchange must provide the notice of disciplinary action to both the Commission and the person who was the subject of disciplinary action within thirty days. Proposed § 9.12(a) provides that no exchange disciplinary action may become effective until at least ten days after the notice is sent to the Commission. This delay would permit the person who is the subject of a disciplinary action time to apply to the Commission for a stay of the disciplinary action in cases where the applicant believes that immediate imposition of the discipline might cause substantial hardship.

However, the Commission is aware that situations may arise in which the integrity of the exchange or the contracts traded thereon can be called into question and that, in such circumstances, an exchange may be required to take prompt disciplinary action. Therefore, proposed § 9.12(a) further provides that the exchange may cause the disciplinary action to become effective before the ten day period in the following circumstances: if the person who is the subject of the disciplinary action has consented to the sanction to be imposed or if the exchange makes a finding that (1) the person upon whom the disciplinary action is imposed has failed to perform contracts, is insolvent or in such financial or operational condition, or is conducting business in such a manner, that to permit him to continue in operation would endanger customers or creditors, the exchange, members of the exchange, or the clearing mechanism of the exchange; (2) prompt disciplinary action is necessary to prevent undue adverse effects on the trading or the prices of contracts traded on the exchange; or (3) conditions or circumstances exist which permit prompt disciplinary action and which are specified in an exchange rule approved by the Commission. The Commission specifically requests comments on these proposals and on whether any other circumstances that would permit the exchange to take action before the end of the ten day period would be appropriate.

If an exchange determines under proposed § 9.12(a) to take disciplinary action before ten days have elapsed, proposed § 9.12(b) requires the exchange to notify both the Commission and the person against whom the disciplinary action is taken immediately by telegram, stating the reasons for which the exchange has determined that it must accelerate the effective date of the disciplinary action. The Commission believes that notice by telegram to the Commission and to the person disciplined followed by a letter to both the Commission and that person stating the reasons underlying the exchange action would be sufficient notice under proposed § 9.12(b).

Section 8c(1)(B) of the Act requires that the notice provided to the Commission and the person disciplined by the exchange and the reasons for the exchange action otherwise "shall be kept confidential." On July 11, 1975, the Commission stated its view that, Section 8c does not require that the Commission keep the disciplinary action information confidential. The Commission noted the strong public interest to be served by the release of information regarding exchange disciplinary actions and that the confidentiality requirement was imposed on the exchanges in order to permit the Commission time to exercise its Section 8c review powers prior to public release of that information. 40 FR 30155 (July 17, 1975).

On November 4, 1976, the Commission published a letter which further delineated its policy with regard to the confidentiality of notices provided to it under section 8c(1)(B). The letter stated that, as a general practice, the Commission would make all exchange disciplinary actions public within five days of receipt of the notice. This five day period would permit the Commission staff opportunity to review the notice and any request for confidentiality in order to determine whether there is any reason the notice should not be made public. Absent such reason the notice would be placed in the Commission's public files and the exchange would be free to disseminate the information. 41 FR 48562 (November 4, 1976).

Proposed § 9.13 would implement the Commission's policy with certain modifications. Section 9.13(a) would require the exchange to keep confidential all information required to be contained in the notice (including the reasons for the exchange action) until the information is placed in the Commission's public files or otherwise becomes public through no act of the exchange. To the extent the person who is the subject of the disciplinary action makes the exchange disciplinary information public, the exchange

[2] In lieu of the written notice, proposed § 9.11 permits the exchange to provide a written decision which accords with proposed § 8.12 of the Commission's rules. See 42 F.R. 11142, 11147 (February 25, 1977).

would therefore be free to disseminate the information. The exchange would be notified when information is placed in the Commission's public files under § 9.13.

Under proposed § 9.13(b) the Division of Trading and Markets will place the notice in the Commission's public files within five business days, unless the exchange or the person disciplined has requested confidential treatment of any information contained in the notice. In that event, the treatment to be accorded such information will be governed by the applicable provisions of the Commission's rules implementing the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552 and 552a.[4] Thus, the staff will review the notice to determine whether there is any reason the notice should not be made public only at the request of the exchange or the person disciplined. Subject to these provisions of § 9.13(b), if the exchange has imposed discipline for any of the reasons enumerated in proposed § 9.12(a)(1), (2) or (3), the Division may place the notice of disciplinary proceeding in the Commission's public files immediately if the exchange so requested in the written notice.

SUBPART C—INITIAL PROCEDURE WITH RESPECT TO APPLICATIONS FOR REVIEW

Proposed § 9.21(a) provides that a person desiring Commission review of exchange disciplinary action or other adverse action must apply to the Commission within thirty days after the notice of the exchange disciplinary action has been mailed to the person's last known address or within thirty days of the other adverse action. Proposed § 9.21(b) specifies that the application should include, among other things, a concise statement of all the facts which would be relevant to the Commission's consideration of the application including, if known, the date on which the disciplinary or other adverse action was imposed by the exchange; the nature of the disciplinary or other adverse action imposed and the specific relief sought; and a statement of the reasons why the applicant believes that the exchange action was not in accordance with the policies of the Act, and the specific facts which support those reasons. Under proposed § 9.12(c) the application must also include an affidavit showing that a copy of the application has been served on the exchange concurrently with its filing with the Commission.

Section 8c(4) of the Act authorizes the Commission, in its discretion, to stay any exchange action which results in any member being suspended, expelled, or otherwise disciplined or in any person's being denied access to the exchange, pending Commission review. Proposed § 9.22(a) provides that any applicant may petition the Commission for a stay of these types of actions or of "other adverse action". Although section 8c(4) does not specifically provide that the Commission may stay action which adversely affects a person, the Commission is of the view that this portion of proposed § 9.22(a) is consistent with the overall purpose of Section 8c and would enable the Commission to forestall the adverse consequences of exchange action in appropriate circumstances.[5]

Under proposed § 9.22(a) any petition for a stay shall state the reasons that the stay is requested and the facts on which the applicant relies. If any facts are subject to dispute, the petition must be supported by affidavits or other sworn statements. Proposed § 9.22(b) provides that the Commission may grant a stay of disciplinary or other adverse action on its own motion although no stay is requested if it determines, based on the information before it, that a stay is justified.

Proposed § 9.23 permits an exchange to file an answer to an application for review within fifteen days of receiving the application. The answer must set forth the facts which support the disciplinary or other adverse action and a statement of why the disciplinary or other adverse action was in accordance with the policies of the Act. The proposed rule does not make an answer mandatory. This has been done to simplify the procedure under this subpart and to conserve time since exchange action may be fully explained in the written notice required by § 9.11. If the exchange chooses not to file an answer in the case of an application to review disciplinary action, the exchange's notice under § 9.11 shall be deemed its answer.

SUBPART D—COMMISSION REVIEW OF DISCIPLINARY OR OTHER ADVERSE ACTION INITIATED BY APPLICATION

The Commission has discretion whether or not to exercise its review powers under section 8c(2). If the Commission determines to deny an application for review, it will promptly notify the exchange and the applicant under proposed § 9.31(a). If the Commission determines to grant the application for review, the Commission will issue an order instituting review of the disciplinary action or other adverse action under proposed § 9.31(b). Proposed § 9.31(c) provides that the Hearing Clerk will serve the Commisison's order on both the exchange and the applicant and will assign a docket number to the proceeding and maintain the official docket. Under proposed § 9.33, the Commission may consolidate a proceeding commenced under the proposed rules with any other proceeding under the rules in accordance with the procedures set forth in § 10.63(a) of the Commission's rules of practice.

Consistent with the Commission's responsibilities under section 8c to make its determination based on the record of exchange action, proposed § 9.34(a) requires the exchange to file a copy of the record of the disciplinary proceeding or other adverse action to the Hearing Clerk within five days of the receipt of the Commission's order instituting review. A copy of the record is also required to be served on the applicant. Each exchange, as a contract market designated by the Commission, is presently required to maintain "full, complete, and systematic records" of, among other things, investigations of complaints received from customers concerning the handling of their accounts and orders and of the action which the exchange takes for any violation that it finds has been committed.[6] 17 CFR 1.51(b) (1976).

If the Commission finds upon reviewing the record provided by the exchange that further proceedings or additional evidence would be necessary and relevant for its review, the Commission may remand the record to the exchange under proposed § 9.34(b). The exchange must then promptly conduct such proceedings or provide the additional evidence requested by the Commission and file the record thereof with the Hearing Clerk and serve a copy on the applicant.

Proposed § 9.35 concerns the briefing procedure to be used under Subpart D. Unless otherwise ordered by the Commission, the applicant will file an opening brief with the Commission within twenty days after receiving the Commission's order initiating review. The applicant's brief may not exceed forty pages, without the permission of the Commission. The exchange will have twenty days to answer the applicant's brief. The exchange's brief is also limited to forty pages, unless the Commission otherwise permits. No further briefs will be permitted. Each party will be required to file an original and five copies of its brief with the Hearing Clerk. The applicable sections of the Commission's rules of practice will govern the form and the manner of service of the briefs.

Under proposed § 9.36, the Commission, in its discretion, may hear oral argument if either party requests oral argument or if the Commission orders argument on its own motion. Any oral argument will be recorded and transcribed.

In rendering its decision, proposed § 9.37(a) implements section 8c(3) of the Act and provides that the Commission may affirm, modify, set aside or remand to the exchange for further proceedings the decision of the exchange, either in whole or in part. If the Commission is equally divided in its decision, the decision of the exchange will be affirmed without opinion.

Proposed § 9.37(b) sets forth the standards which the Commission will employ

[4] The Commission's rules implementing the Privacy Act are set forth in 17 CFR Part 146 (1976); those implementing the Freedom of Information Act are published at 41 FR 16288 (April 16, 1976).

[5] In any event under section 8a(5) of the Act, 7 U.S.C. 12a(5) (Supp. V, 1975), the Commission may adopt such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act.

[6] As indicated above, this provision would be amended upon the adoption of proposed Part 8 of the Commission's rules governing contract market disciplinary procedures.

in reviewing exchange action under section 8c:

(1) Whether the exchange disciplinary or other adverse action was taken accordance with the rules of the exchange;

(2) Whether the exchange observed fundamental fairness in conducting its disciplinary proceeding or proceeding resulting in other adverse action;

(3) Whether there is substantial evidence in the record to support a finding that there has been a violation of the rules of the exchange or that the exchange was otherwise justified in taking action;

(4) Whether the disciplinary or other adverse action taken by the exchange was reasonable in light of all the circumstances; and

(5) Whether the exchange's disciplinary or other adverse action otherwise accords with the policies of the Act.

The Commission believes that the standards set forth in (1) through (4) above reflect three important policies of the Act: (1) That in exercising their self-regulatory responsibilities, exchanges should take vigorous action against those who engage in activities that violate their rules, (2) that exchange disciplinary proceedings should be conducted in a manner consistent with considerations of due process and (3) that the discipline imposed by exchanges must be fair and have a reasonable basis in fact. These policies are reflected in the rules the Commission has proposed regarding exchange disciplinary procedures. The Commission requests specific comment on these standards and on any additional or alternative standards which commentators believe accord with the policies of the Act.

REVIEW OF DISCIPLINARY ACTION BY THE COMMISSION ON ITS OWN MOTION

Recognizing that exchange self-regulation is an important policy of the Act, the Commission does not intend to review exchange action on its own motion as a common practice and has decided not to propose specific rules governing this aspect of its review powers under section 8c. However, the Commission expects exchanges to act promptly and forcefully to enforce their rules consistent with their self-regulatory responsibilities. If the exchange does not discharge its responsibilities—for example, if a member receives a nominal fine for egregious conduct detrimental to the market and therefore is not likely to apply to the Commission for review—the Commission may determine to review the exchange action on its own motion. If an exchange fails to act, section 8c (1)(A) of the Act empowers the Commission to discipline a member.

Review of exchange disciplinary action on its own motion will permit the Commission to determine whether the exchange has discharged its responsibilities in a particular case. As in the case of appeals, the Commission may affirm, modify, set aside or remand for further proceedings, in whole or in part, the decision of the exchange. Review will also complement the Commission's general oversight of the exchanges. If review of exchange disciplinary action discloses that the exchange has failed to carry out its self-regulatory responsibilities properly, the Commission may deem it appropriate to initiate an enforcement proceeding, which could include review of the exchange's designation as a contract market, assessment of civil penalties or other action within its authority as it deems appropriate to effectuate the provisions of or to accomplish the purposes of the Act.

In consideration of the foregoing, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by adding a new Part 9 to read as follows:

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY OR OTHER ADVERSE ACTION

Subpart A—General Provisions

Sec.
9.1 Scope of rules.
9.2 Definitions.
9.3 Provisions incorporated by reference.
9.4 Default by the parties.
9.5 Settlement.
9.6 Waiver of rules.

Subpart B—Notice of Disciplinary Action

9.11 Form and content of notice.
9.12 Effective date of disciplinary action.
9.13 Confidentiality of the notice.

Subpart C—Initial Procedure With Respect to Applications for Review

9.21 Application.
9.22 Stay pending review.
9.23 Answer.

Subpart D—Commission Review of Disciplinary or Other Adverse Action Initiated by Application

9.31 Institution of review.
9.32 Docketing of the proceeding.
9.33 Consolidation.
9.34 Record.
9.35 Briefs.
9.36 Oral argument.
9.37 Decision by the Commission.

AUTHORITY: Secs. 8a(5) and 8c of the Commodity Exchange Act, (7 U.S.C. 12a(5), 12c (Supp. V, 1965)).

Subpart A—General Provisions

§ 9.1 Scope of rules.

This part shall govern the review by the Commission, pursuant to section 8c of the Act, of any suspension, expulsion, disciplinary or access denial action, or other adverse action by an exchange, upon application of a member of an exchange who is suspended, expelled, or otherwise disciplined or of any person who is denied access to an exchange or who is otherwise adversely affected by any other action of an exchange.

§ 9.2 Definitions.

For purposes of this part:

(a) "Disciplinary action" means the suspension, expulsion or other discipline imposed on a member of an exchange by that exchange or any action by an exchange which denies access to that exchange to any person: *Provided*, That imposition of a minor sanction against a person for violation of exchange rules of decorum, attire or similar rules shall not constitute disciplinary action.

(b) "Disciplinary proceeding" means any formal or informal proceeding by an exchange which results in a disciplinary action.

(c) "Division of Trading and Markets" means that division within the Commission which, among other things, reviews notices of disciplinary action under this part.

(d) "Exchange" means any contract market designated as such by the Commission pursuant to section 5 of the Act.

(e) "Hearing Clerk" means the employee of the Commission designated as such in the Commission's Office of Hearings and Appeals.

(f) "Member of an exchange" means, in addition to the person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such person.

(g) "Party" means both the person who has been the subject of a disciplinary action or other adverse action by an exchange and that exchange.

(h) "Record" means all evidentiary and other documents that an exchange compiles and maintains in the course of a disciplinary proceeding or a proceeding resulting in other adverse action, including those documents that an exchange is required to compile and maintain in accordance with the provisions, of this chapter, and such recordings, transcripts and other documents applicable to the particular disciplinary or other proceedings as may aid the Commission in the review of such proceeding and of the decision rendered therein.

(i) "Rules of an exchange" means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, or stated policy of an exchange or instrument corresponding thereto.

(j) "Rules of Practice" means the Commission's rules of practice contained in Part 10 of this chapter.

§ 9.3 Provisions incorporated by reference.

The following provisions of the rules of practice apply to this part: Section 10.4 (Business Address; Hours), Section 10.5 (Computation of Time), § 10.6 (Changes in Time Permitted for Filing), § 10.7 (Date of Entry of Orders), § 10.10 (Ex Parte Communications), § 10.11 (Appearance in Adjudicatory Proceedings), § 10.12 (a), (b), (c), (d), (e)(1)–(e)(4), (e)(6), (f) (Service and Filing of Documents; Form and Execution) and such other sections of the rules of practice as shall be hereinafter specified and as the Commission shall declare to be applicable during a proceeding under this part. For purposes of this part, functions assigned by the rules of practice to an "Administrative Law Judge" shall be performed by the Commission.

§ 9.4 Default by the parties.

In the event that either party fails to file any document or make any appearance which is required under this part, the Commission, in its discretion, may dismiss the proceeding before it, or, based on the record before it, may affirm, modify, or set aside the exchange decision

or remand the matter for further proceedings before the exchange, as it deems appropriate.

§ 9.5 Settlement.

(a) At any time before there has been a final determination by the Commission of any review proceeding sought or instituted under this part, the parties may propose offers of settlement. All offers of settlement shall be in writing and shall be filed with the Commission. All offers of settlement shall:

(1) Acknowledge service of the order instituting review,

(2) Admit the jurisdiction of the Commission with respect to the matters stated in the order,

(3) Include a waiver of (i) all subsequent procedures in the proceeding, (ii) judicial review, and (iii) any objection to staff participation in the Commission's consideration of the offer,

(4) Stipulate the record basis on which an order may be entered and

(5) Consent to the entry of an order reflecting the terms of the settlement agreed upon.

The Commission may, in its discretion, accept or reject any offer of settlement. If the offer of settlement is accepted, the Commission will issue an order based on the offer which will terminate the proceeding before the Commission as to all parties. If the Commission rejects the offer of settlement, the parties will be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. If the offer of settlement is rejected, that offer and any documents relating thereto shall not constitute an acknowledgement, admission, waiver, stipulation, consent or other statement contained therein. A rejected offer of settlement and any document relating thereto shall not be used in any manner in the review by the Commission or in any proceeding before the exchange.

§ 9.6 Waiver of rules.

To prevent undue hardship on any party or for other good cause the Commission may waive any rule in Subparts A through D of this part in a particular case and may order proceedings in accordance with it direction upon a determination that no party will be prejudiced and that the ends of justice will be served. Reasonable notice shall be given to all parties of any action taken pursuant to this provision.

Subpart B—Notice of Disciplinary Action

§ 9.11 Form and content of notice.

(a) Each time that an exchange takes disciplinary action, the exchange shall, within thirty (30) days thereafter, provide written notice of such action to the person against whom the action was taken and to the Commission. For purposes of this part, the written notice of disciplinary action may be either a written decision which accords with § 8.12 of this chapter or other written notice which shall include:

(1) The name of the person against whom disciplinary action was taken;

(2) A statement of the reasons for the exchange action together with a listing of any rules which the person who was the subject of the disciplinary action was charged with having violated;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged; and

(4) The terms of the disciplinary action taken.

(b) Delivery of the notice shall be made either personally to the person who was the subject of the disciplinary action or by mail to such person at his last known address. Copies of the notice shall be delivered to the Commission, either in person during normal business hours or by mail at its principal office in Washington, D.C., to the attention of the Division of Trading and Markets. Notice by mail to the Commission shall be effective upon receipt.

(c) Upon review of the notice, the Division of Trading and Markets may request additional information regarding the disciplinary action taken, including the record and a brief statement of the evidence and testimony adduced to support the exchange's finding that a rule or rules of the exchange were violated. Within thirty (30) days the exchange shall deliver the information requested to the Division and to the person who is the subject of the disciplinary action in the manner prescribed by paragraph (b) of this section.

(d) The notice and the submission of additional information provided pursuant to this section shall be certified as true and correct by a duly authorized officer or agent of the exchange who has knowledge of the disciplinary action.

§ 9.12 Effective date of disciplinary action.

(a) Any disciplinary action taken by an exchange shall not become effective until at least ten (10) days after written notice prescribed by § 9.11(a) is delivered to the Commission; *Provided*, That the exchange may cause the disciplinary action to become effective prior to that time if the person against whom the action is taken has consented to the sanction to be imposed or if the exchange makes a finding that:

(1) Such person has failed to perform contracts; is insolvent; or is in such financial or operational condition or conducting business in such a manner that such person cannot be permitted to continue in business with safety to customers, creditors, the exchange, members of the exchange, or the clearing mechanism of the exchange;

(2) Such action is necessary to prevent immediate and serious adverse effects on trade or the prices of contracts traded on or through the facilities of the exchange; or

(3) Conditions or circumstances exist which permit disciplinary action to become effective prior to that time and which are specified in a rule of the exchange previously approved by the Commission.

(b) If the exchange determines in accordance with paragraph (a) of this section that the disciplinary action shall become effective prior to the expiration of ten (10) days after written notice thereof, it shall by telegram immediately notify the Commission and the person against whom the action is taken, stating the reasons for that determination. Such notification may also be included in the written notice called for by § 9.11(a).

§ 9.13 Confidentiality of the notice.

(a) Except as otherwise provided by § 9.11, any information required to be included in the written notice of disciplinary action shall be kept confidential by the exchange until such information is placed in the Commission's public files as provided in this section or until such information is otherwise made public through no act of the exchange or any agent, representative, employee or official thereof. The Division of Trading and Markets shall notify the exchange promptly when information has been placed in the public files of the Commission as provided in this section.

(b) The Division of Trading and Markets shall review each notice of disciplinary action and shall place the notice in the public files of the Commission within five (5) business days after the receipt of the notice from the exchange. However, if the exchange in the notice of disciplinary action or the person who was the subject of the disciplinary action requests that any information in the notice be kept confidential, the treatment to be accorded such information shall be governed by the applicable provisons of Part 145 and Part 146 of this chapter (the Commission's rules implementing the Freedom of Information Act and the Privacy Act, respectively). Subject to the foregoing, if the exchange has taken disciplinary action for any reason enumerated in § 9.12(a)(1), (2) or (3), the Division of Trading Markets may place the notice of disciplinary action in the public files of the Commission immediately if the exchange has no requested in the notice.

Subpart C—Initial Procedure With Respect to Applications for Review

§ 9.21 Application.

(a) Any person who is the subject of disciplinary action by an exchange or any person who is adversely affected by any other action of an exchange may, at any time within thirty (30) days after notice of the disciplinary action has been provided to the person in accordance with § 9.11(a) or within thirty (30) days of that adverse action, apply to the Commission for review of the exchange action.

(b) Each application submitted to the Commission pursuant to this section shall include:

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

(2) The name of the exchange;

(3) If known, the specific rule or rules of the exchange which resulted in the applicant's being the subject of disciplinary or other adverse action.

(4) A concise statement of all facts relevant to the consideration of the application, including, if known, the date and place of each alleged act or omission forming the basis of the exchange's action.

(5) The date on which the disciplinary or other adverse action was imposed by the exchange;

(6) The disciplinary or other adverse action imposed and the relief sought; and

(7) A statement of the reasons why it is claimed that the disciplinary action or other adverse action is not in accordance with the policies of the Act, and the specific facts which support those reasons.

(c) The application shall include an affidavit showing that a true copy of the application has been served on the exchange involved, concurrently with its filing with the Commission.

§ 9.22 Stay pending review.

(a) An application submitted under § 9.21 may include a petition that the Commission stay the disciplinary or other adverse action, pending the review by the Commisison. The petition shall state the reasons that the stay is requested and the facts relied upon, and if the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements or copies thereof. Based upon the petition, the Commission, in its discretion, may order a stay of the disciplinary or other adverse action.

(b) The Commission may, on its own motion, order a stay of the disciplinary or other adverse action when review has been requested by application, if it determines that a stay is justified based upon the information before it.

§ 9.23 Answer.

Within fifteen (15) days after receipt of an application, served in accordance with § 9.21(c), the exchange may, at its election, file an answer with the Commission, setting forth facts which support the disciplinary action or other adverse action taken by the exchange, and a statement why, notwithstanding the claims made in the application, the disciplinary action or other adverse action by the exchange is in accordance with the policies of the Act. If an answer is filed, it shall be accompanied by an affidavit showing that a true copy of the answer has been served upon the applicant. If no answer is filed by the exchange in the case of an application to review disciplinary action of the exchange, the notice of the disciplinary action filed with the Commission under § 9.11 shall be deemed the exchange's answer to the application.

Subpart—Commission Review of Disciplinary Action or Other Adverse Action Initiated by Application

§ 9.31 Institution of review.

(a) If the Commission determines, in its discretion, to deny the application to institute a review of the disciplinary action or other adverse action, it shall promptly give notice to that effect to the exchange and to the applicant.

(b) If the Commission determines, in its discretion, to grant the application for review, the Commission shall issue an order to institute a review of the disciplinary action or other adverse action.

§ 9.32 Docketing of the proceeding.

If the Commission institutes review pursuant to the provisions of § 9.31, the Hearing Clerk shall promptly serve the order instituting review on the exchange and the applicant. Thereafter, the Hearing Clerk shall assign a docket number to the proceeding and maintain the official docket. The proceeding may be identified by such number.

§ 9.33 Consolidation.

The Commission may consolidate a proceeding hereunder with any other proceedings under this part in accordance with the procedures set forth in § 10.63(a) of the rules of practice.

§ 9.34 Record.

(a) Within five (5) days of the receipt of the order served under § 9.32, the exchange shall serve a copy of the record of the disciplinary proceeding or other adverse action on the applicant and shall file a copy with the Hearing Clerk.

(b) The Commission may remand the record to the exchange for other proceedings or to have the record supplemented with additional evidence as the Commission may deem necessary and relevant. The exchange shall promptly conduct proceedings or adduce the additional evidence as ordered by the Commission, and promptly serve a copy of the record of these additional proceedings or that evidence on the applicant and shall file a copy with the Hearing Clerk.

§ 9.35 Briefs.

(a) Unless otherwise ordered by the Commission, the applicant shall file an opening brief within twenty (20) days after receipt of the order instituting review under § 9.32. The brief shall not exceed forty (40) pages, without leave of the Commission.

(b) An answering brief shall be filed by the exchange within fifteen (15) days after service of the opening brief and shall not exceed forty (40) pages, without leave of the Commission.

(c) No further briefs shall be permitted.

(d) An original and 5 copies of all briefs submitted under this section shall be filed with the Hearing Clerk.

(e) The briefs shall follow the form prescribed in § 10.82(c) (1) and (2) of the rules of practice.

(f) All briefs shall be served in the manner prescribed in § 10.12(a) of the rules of practice.

§ 9.36 Oral argument.

On its own motion or at the request of either party, the Commission may, in its discretion, hear oral argument by the parties any time before the decision of the Commission is filed with the Hearing Clerk. Any such oral argument shall be recorded and transcribed in written form.

§ 9.37 Decision by the Commission.

(a) Upon review, the Commission may affirm, modify, set aside or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision shall be contained in its opinion and order. In the event the Commission is equally divided as to its decision, the decision of the exchange shall be affirmed without opinion.

(b) The standards for Commission review of the disciplinary action or other adverse action will be:

(1) Whether the exchange disciplinary action or other adverse action was taken in accordance with the rules of the exchange;

(2) Whether fundamental fairness was observed in the conduct of the disciplinary proceeding or the proceeding resulting in other adverse action;

(3) Whether there is substantial evidence in the record to support a finding that there has been a violation of the rules of the exchange or that the exchange was otherwise justified in taking the disciplinary or other adverse action;

(4) Whether the disciplinary or other adverse action taken by the exchange was reasonable in light of all circumstances; and

(5) Whether the disciplinary action or other adverse action otherwise accords with the policies of the Act.

Issued in Washington, D.C., on June 9, 1977.

By the Commission.

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

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TUESDAY, JUNE 14, 1977

PART III

FEDERAL TRADE COMMISSION

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MAGNUSON-MOSS WARRANTY—FTC IMPROVEMENT ACT

Guidelines for Public Participation in Rulemaking Proceedings

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Guidelines for Public Participation in Rulemaking Proceedings

These Guidelines explain the expanded authority granted the Commission for conducting rulemaking proceedings under the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act and describe the Bureau of Consumer Protection's procedures for implementing section 202(h) of that Act. The Bureau is issuing these Guidelines in conformance with the authority delegated it by the Commission's rules of practice § 1.17(d) (2), 16 CFR 1.17(d) (2).

The Guidelines have been divided into two parts. The first, "Rulemaking and Public Participation Under the FTC Improvements Act," provides a step-by-step explanation of Magnuson-Moss rulemaking proceedings and discusses the eligibility requirements for reimbursement imposed by the statute and the standards applied in reviewing applications. In the second part, "Applying for Reimbursement for FTC Rulemaking Participation," is a "how to" booklet. It describes the details of the application process and the budgetary administration of the program.

The Bureau of Consumer Protection has solicited the viewpoints of interested parties in preparing these Guidelines. As finally drafted, the Guidelines reflect extensive comments received from consumer groups, industry, Congressional committees and members of the public.

The Guidelines were adopted by the Bureau of Consumer Protection on May 31, 1977; however, the Bureau will consider amendments to them in response to further comments.

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RULEMAKING AND PUBLIC PARTICIPATION UNDER THE FTC IMPROVEMENT ACT

INTRODUCTION

On January 4, 1975, the Federal Trade Commission Act was amended by the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (Pub. L. 93-637, 88 Stat. 2183 et seq.). Title II of this law confirmed the Federal Trade Commission's authority to issue Trade Regulation Rules and established the procedures to be followed in their promulgation.

The Improvement Act also gave the Commission the authority to compensate people for participating in rulemaking proceedings under certain conditions. Congress subsequently appropriated $500,000 for compensation during fiscal 1976, and again for fiscal 1977. The President's budget for FY 1978 also requests $500,000.

In August 1975, the Commission issued rules of practice for the new rulemaking procedures. In Rule 1.17, which covers the compensation program, the Commission delegated to the Director of the Bureau of Consumer Protection authority over compensation. The Bureau has already approved compensation to interested persons for participation in rulemaking proceedings during FY 1976 and FY 1977. The purpose of this pamphlet is to provide additional guidelines describing the rulemaking process and the standards and procedures for compensation.

Part I explains FTC rulemaking, to give applicants the context for the compensation program and to explain the procedures within which successful applicants must work.

Part II discusses the eligibility requirements imposed by the statute and the standards applied in reviewing applications.

A separate pamphlet, "Applying for Reimbursement for FTC Rulemaking Participation," describes details of the application process and the administration of the program.

I. RULEMAKING UNDER THE FTC IMPROVEMENT ACT

A. NATURE OF THE PROCEEDINGS

Before passage of the Improvement Act, FTC rulemaking was conducted under the general authority of section 6(g) of the Federal Trade Commission Act (15 U.S.C. 46(g)) by following the Administrative Procedures Act (5 U.S.C. 553). Section 553 provides for what is commonly called informal rulemaking. The basic requirements are that an agency publish a notice containing the proposed rule or the subjects to be covered by a rule, accept written comments from interested persons, and, when a final rule is promulgated, publish a general statement of the rule's basis and purpose. There is no requirement that oral presentations be allowed, opportunity for cross-examination granted, or rebuttal submissions accepted.

Section 202 of the Improvement Act requires the Commission, when issuing a Trade Regulation Rule, to proceed under Section 553 of the APA and also under the special requirements established by the Improvement Act. These requirements are that:

1. The Notice of proposed rulemaking state with particularity the reason for the proposed rule;

2. Interested persons have an opportunity to submit written data, views, and arguments;

3. An opportunity for an oral hearing be provided;

4. Any final rule be based on the rulemaking record and be accompanied by a statement of basis and purpose.

The major addition to APA section 553 rulemaking is the requirement that an opportunity for an informal oral hearing be provided. The Improvement Act goes on to prescribe requirements for these hearings. Of particular importance is the provision that "if the Commission determines that there are disputed issues of material fact it is necessary to resolve," an interested person is entitled to present rebuttal submissions and conduct, or have conducted for him, cross-examination when this is (a) appropriate and (b) required for a full and true disclosure with respect to these issues. The statute also says that the Commission can make rulings to avoid unnecessary cost or delay. This power includes authority to impose time limits, to require that cross-examination be conducted on behalf of a person rather than by the person himself, to aggregate the interests of different groups for purposes of cross-examination and to make such other rules and rulings as may be desirable for fair and expeditious conduct of the hearing.

Finally, the Improvement Act requires that the statement of basis and purpose that accompanies a rule include a statement on the prevalence of the acts or practices treated by the rule, the manner and context in which these are unfair or deceptive, and the economic effect of the Rule, taking into account the effect on small business and consumers.

THE FTC RULEMAKING PROCEEDING

Step 1—Publication of Initial Notice.
Step 2—Presiding Officer is Designated.
Step 3—Commission Accepts Proposal of Issues for which Cross-Examination Might be Appropriate (Up to 60 days after initial notice).
Step 4—Commission Accepts Written Submissions of Data, Views, and Arguments (Until 45 days before informal hearings).
Step 5—Publication of Final Notice of Proposed Rulemaking (No sooner than 60 days after initial notice).
Step 6—Interested Parties Notify Presiding Officer of Desire to Cross-examine (Within 20 days after Final Notice).
Step 7—Informal Hearings (Approximately 90 days after Final Notice).
Step 8—Reputtal Submissions by Interested Parties (As appropriate).
Step 9—Presiding Officer Prepares His Report.
Step 10—Staff Makes Recommendations to the Commission in a Report Based on the Record and on Presiding Officer's Report.
Step 11—Acceptance of Comments on the Presiding Officer's Report and Staff Recommendations and Comments (Up to 60 days after step 10).
Step 12—Rulemaking Record (Steps 2 through 11 plus Proposed Rule) Submitted to Commission for Final Action.

FTC RULES OF PRACTICE REQUIREMENTS

Step 1: The Commission's rules of practice provide that the proceeding commences with publication in the FEDERAL REGISTER of an *initial notice of proposed rulemaking*. The notice must include (1) the terms or substance of the rule or a description of the subjects and issues, (2) the legal authority, (3) a statement describing with particularity the reason for the rule, (4) an invitation to all interest persons to propose issues on which cross-examination might be appropriate, and (5) an invitation to all interested persons to comment on the proposed rule.

While it is not required by the statute or the Rules of Practice, the Commission frequently publishes both a list of questions and issues which the Commission regards as particularly important to the proceeding, and a staff report summarizing the results of the inquiry leading to the proposed rule. Also published in the initial notice, as appropriate, is an announcement of the availability of compensation for public participation. Also, although not required, statements may be added which identify issues the Commission does *not* consider to be covered by the proceeding. These statements are to help interested parties prepare their testimony or written comments at the earliest possible stage.

Step 2: A *Presiding Officer* is designated to run the proceeding. The Presiding Officer has the power to alter deadlines and extend time limits. This basic schedule for rulemaking, as established by the rules of practice, is subject to modifications the Presiding Officer may wish to make.

Step 3: Immediately after publication of the initial notice the Commission begins to accept *written submissions of data, and views and arguments* on all issues of fact, law, and policy. These written comments are accepted until 45 days before the start of the informal hearing.

Step 4: Written comments proposing issues for possible cross-examination are accepted for only 60 days after publication of the initial notice, or for such other time as the

Commission establishes in the initial notice. The only issues that *must* be designated for possible cross-examination are disputed issues of fact that are material and necessary to resolve. However, the Commission and the Presiding Officer retain the power to designate any other issues.

Step 5: After the expiration of the 60-day time limit for filing requests for designation of issues, a *final notice of proposed rulemaking* is published in the FEDERAL REGISTER. It is also made available to interested persons to the extent practicable through other means and establishes the places and dates for informal hearings. It contains the designated issues, instructions to persons who wish to make oral presentations, and an incorporation by reference of the contents of the initial notice.

Step 6: Within 20 days after publication of this final notice, an interested person who may wish to cross-examine must notify the presiding officer in writing of this particular interest with respect to each issue designated. The presiding officer then identifies groups of persons with the same or similar interests and may require them to select a single representative for purposes of examination, including cross-examination.

The Rules do not establish a set time between issuance of the final notice and commencement of the informal hearings. Because of the requirement that written comments be submitted 45 days before the informal hearings, however, the usual practice is to allow at least 90 days so persons who wish to make written comments have adequate time to do so. Cross-examination may not be necessary.

Step 7: The *informal hearing* may take place in one city or in several cities. It is precisely what its name implies; a nonadjudicative, informal inquiry designed to obtain information which can assist the Commission in making a decision. Formal rules of evidence do not apply and witnesses are usually not sworn.[3]

Step 8: Submissions by interested parties rebutting issues raised by written comments on the public record and during the informal hearing are accepted.

Step 9: After the informal hearing record is closed, the *Presiding Officer prepares a summary of the record* as it relates to the designated issues and makes initial findings and conclusions on these issues, together with such other findings and conclusions as he sees fit.

Step 10: The rulemaking staff then makes recommendations to the Commission in a report based on the record and taking into account the Presiding Officer's report.

[3] One substantive point must be emphasized. The fact that an issue is designated for possible cross-examination does not necessarily mean that cross-examination will be conducted by the parties. It may be conducted by the Presiding Officer instead, or the Presiding Officer may determine to limit cross-examination in general or on a particular point. Even after designation, cross-examination is allowed "to the extent to which it is appropriate and is required for a full and true disclosure * * *." The general criteria that determine whether the request will be granted are whether the issue is one of specific, in contrast to legislative, fact, whether full and true disclosure can be achieved only through cross-examination rather than through rebuttal or presentation of additional oral testimony, circumstantial guarantees of the trustworthiness of a presentation, and whether the particular presentation is required for resolution of a designated issue. The presiding officer can, of course, add issues at any time during the proceeding if in his judgment this is necessary or desirable.

Step 11: Both these documents are placed on the public record and comments on them are accepted for 60 days.

Step 12: The reports of the Presiding Officer and the staff and the public comments on these reports, together with the entire rulemaking record, are submitted to the Commission for final action. If a final rule is promulgated, a statement meeting the requirements of the FTC Improvement Act accompanies it.

A final rule is subject to judicial review in the United States Court of Appeals upon the request of any interested person, including a consumer or consumer organization. Any appeal challenging the sufficiency or legality of the rulemaking proceeding, or the substantiality of the record, must be filed within 60 days after promulgation of the rule. Thereafter the general provisions of Chapter 7 of Title 5 of the U.S. Code apply.

B. TYPES OF PARTICIPATION

There are several stages of the proceeding in which an interested person can participate. A person may be compensated for any or all of these types of participation. Each, as described below, involves different activities and different deadlines:

PREPARATION

Step 3: Submission of requests for designation of issues (must be filed within 60 days after publication of the initial notice).

STEP 4: *Development of substantive data, views and arguments for written submissions or oral presentations.*

HEARING PARTICIPATION

Step 6 & 7: Appearing as a witness, presenting studies or testimony, or participating as a party in the informal hearing, with a right to examine or cross-examine witnesses as allowed by the Presiding Officer: Requests to participate must be completed within 80 days after the initial notice, the time when notifications of interest must be submitted to the Presiding Officer.

Step 8: Preparation of rebuttal statements.

POST-HEARING PARTICIPATION

Step 14: Preparation of post-hearing comments. These must be completed within 60 deays of the time the staff statement is placed on the public record.

Two possible types of activities are not reimbursable. Commission Rules provide that a rulemaking proceeding can commence *in response to* a petition for such action by any person. In accordance with the language of the Magnuson-Moss Act, the Bureau will not, however, consider compensation for preparation of any petition even though one may eventually result in a rulemaking proceeding. Nor will the Bureau compensate people for participation in judicial review of a Trade Regulation Rule. The Rules of Practice, which track the Magnuson-Moss Act, state that a rulemaking proceeding commences upon the issuance of an initial notice. It concludes when the Commission promulgates a final rule, or decline to do so. Thus, petitions *precede* the rulemaking proceeding; any judicial review *follows* it.

II. STATUTORY STANDARDS FOR COMPENSATION

A. TERMS OF THE ACT

Section 202(h) of the Improvement Act (15 U.S.C. 57A) states: [4]

(1) The Commission may, pursuant to rules prescribed by it, provide compensation for reasonable attorneys fees, and other costs of participating in a rulemaking proceeding under this section to any person

(A) Who has, or represents, an interest

(i) Which would not otherwise be adequately represented in such proceeding and

(ii) Representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole and

(B) Who is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceedings.

(2) The aggregate amount of compensation paid under this subsection in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either

(A) Would be regulated by the proposed rule

or

(B) Represent persons who would be so regulated, may not exceed 25 percent of the aggregate amount paid as compensation under this subsection to all persons in such fiscal year.

(3) The aggregate amount of compensation paid to all persons in any fiscal year under this subsection may not exceed $1,000,000.

This language presents several issues of section was added in the House-Senate Conference, the only mention of the section is in the Conference Report, which emphasizes that the purpose of the compensation program is "to provide to the extent possible that all affected interests be represented in rulemaking proceedings so that rules adopted thereunder best serve the public interest * * *."

The Bureau believes the intent of Congress is best carried out by policies allowing broad representation, and its interpretations are oriented accordingly.

B. ELIGIBLE APPLICANTS

According to the statute, "any person" may apply for compensation. According to section 551(2) of the Administrative Procedure Act, "person" means "an individual, partnership, corporation, association, or public or private organization other than an agency." "Agency," in section 551(1), includes "each authority of the Government of the United States" except Congress, the courts, territorial governments, and the government of the District of Columbia. Under these definitions, any entity except a part of the Executive branch of the U.S. Government can apply for compensation.

C. LEVELS OF COMPENSATION

The statute provides that the Commission may "provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding * * *."

This language requires that a participant not be paid in excess of the actual cost to it of participating in the proceeding. The program is not intended to allow an applicant to make a profit. An organization may not, for example, hire an attorney for $10 an hour, charge the Commission $30 an hour for the attorney's services, and keep the balance. Nor may it claim compensation for its employees in excess of the actual cost of the employees' salaries and benefits. An additional limitation is that standards must be set as to the reasonableness of the prices charged for those services. Obviously, the Bureau cannot commit itself to reimburse participants for any cost incurred, no matter how high.

Within these limitations the participant may be compensated for all of the various kinds of costs incurred. Salaries, travel,

[4] The statutory language is exact. The format has been changed to enhance readability.

printing and document reproduction, and other operating expenses the Bureau deems necessary to effective participation are compensable.

D. DEFINITION OF INTEREST

Just as the term "any person" is the broadest that Congress could have chosen, so is the term "interest." No one should be ineligible whose concerns, or whose particular point of view, might be crucially affected by the proceeding.

To date, most applicants have claimed to represent the interests of consumers or large subgroups of consumers. Since the Bureau believes the consumer interest is a legitimate one under the statute, these broad formulations of the interests involved have usually been accepted.

Most of the crucial issues in rulemaking, however, involve determinations of where the consumer interest really lies. Industry representatives may argue that the ultimate costs of a rule to consumers will exceed the benefits from it, or that the rule involves undesirable transfers of money or risk from one group of consumers to another. Within this framework rulemaking proceedings often hinge on complex questions concerning whether particular practices occur with sufficient frequency to justify government action, the efficacy of proposed remedies, the scope of the practices to be covered, and their economic impact.

Disputes over such issues involve complicated realtionships of common interest and conflict between different segments of industry and different types of consumer interest or subgroups of consumers. For example, a proposed rule on a particular industry might raise costs and prices as the price of preventing certain deceptive practices. At least three distinct consumer interests may arise in such a case: (1) Those who want the protection and believe it worth the increase in price; (2) those who prefer to look out for themselves and buy more cheaply; and (3) those who would be priced out of the market completely by the increase, therefore deriving no benefit from the rule. It is unclear how a group representing "consumers" can encompass all three points of views.

Or, groups may agree on a consumer protection goal but be opposed in their assessment of the best way to attain it. An example is the conflict between those who want detailed regulation in a particular area and those who favor a free market approach with minimal government intervention. Again, it is difficult for one consumer representative to advocate the alternative approaches effectively. Despite these inherent problems, the Bureau has determined that broad consumer representation is preferable to none, and has approved applications to represent consumers as a general class. While the Bureau will continue this policy, in the future, it will give preference to applicants who define their interest or point of view with greater specificity.

E. NECESSITY FOR REPRESENTATION

Although it is difficult to define precisely when representation of an interest "is necessary for a fair determination of the rulemaking proceeding taken as a whole," the Bureau has determined that this requirement is met if the proposed rule would significantly affect the interest. The requirement is not met when an applicant wishes a proceeding broadened to take care of its particular concerns. If the particular interest is not significantly affected by the proceeding as bounded by the Commission then representation of that interest in the proceeding is unnecessary.

F. ADEQUACY OF REPRESENTATION

The Bureau can authorize compensation only if it finds the interest the applicant has or represents "would not otherwise be adequately represented in such proceeding."

Bureau staff attorneys have a duty to identify and present information on the effect of the rule on various interests. Other individuals or representatives may also participate in the hearing, whether compensated or not, and introduce data, views, and arguments on behalf of their interests. The Bureau cannot determine that an applicant's participation is needed for adequate representation of the interest unless the applicant's proposed activities are compared with the efforts of the staff and other participants. If, for example, a consumer group wants to conduct a survey which duplicates six surveys already on the record it is difficult for the Bureau to find that the consumer interest will not be adequately represented without the redundant evidence. The adequacy clause of the statute requires that replication of material already on the record or scheduled to be put on the record does not meet the standard.

Third, the statutory requirement that without the particular applicant the interest will not be adequately represented means that the quality of an application is relevant. The Bureau must determine that it is reasonably likely that the applicant can competently represent its interest.

It is, however, entirely possible that an applicant might make a significant contribution to a proceeding without making representation of an interest completely adequate. The test is not whether a particular applicant will make representation of an interest fully adequate, but whether the representation will make a substantial contribution to the adequacy of the representation.

For these reasons, the Bureau must evaluate the substance of applications so it can determine that the applicant can reasonably be expected to make a sufficient contribution to the adequacy of the representation of the interest.

Because of the diverse proceedings involved, the great variation in interests and applicants, and the need to give applicants sufficient flexibility to develop their own theories and approaches, it is impossible to establish mechanistic standards for evaluating the substance of applications. Both applicants and Bureau staff must meet short deadlines. The basic schedule for rulemaking hearings set forth in Part I does not always allow applicants to develop their proposals as thoroughly as they might like and does not allow Commission staff to impose elaborate information requirements on them. Nor does it allow for the extensive negotiations that characterize grant or contract processes.

To meet the statutory standards while minimizing delays and uncertainty, the Bureau has evolved a set of possible factors to assist its determination. These factors are guides, not arbitrary tests.

(1) *Point of view.* Key issues in rulemaking proceedings often involve sophisticated questions about the true nature of different consumer interests. Evidence that an applicant has a point of view, not already represented by the FTC staff attorneys or any other party, that would help illuminate these issues can be favorable.

(2) *Specificity.* The more clearly an applicant sets forth the particular issues in the proceeding it intends to address, the point of view of the interest it represents, the nature of the information it intends to develop or introduce, and the identities and qualifications of the personnel working on the project or serving as experts, the more likely it is to be funded. Without such information, the Bureau cannot make the required findings.

(3) *Relation between the applicant and the interest.* The statute does not establish any criteria for determining whether an applicant truly represents the interest involved; however, the Bureau must examine the bona fides of the representation in examining adequacy. An industry trade association that claims to represent consumers would be viewed skeptically, and vice versa, for example.

(4) *Constituency.* It can be a favorable factor if the applicant is a membership organization or is supported by cash contributions from the public or from a particular constituency. The willingness of individuals to support the applicant provides some evidence that the organization is indeed responsive to their interest and raises a presumption that the group will continue to represent its constituency's interest in the future.

(5) *Experience and expertise in the substantive area.* If an applicant has been involved in the subject area in some fashion and has developed some competence on the issues presented by the rulemaking proceeding because of this involvement, there is better reason to think that its contribution will be valuable than if it has shown no prior interest in the area.

(6) *Experience in trade regulation matters generally.* If an applicant has not been involved in a substantive area but has been involved in analogous problems and has demonstrated competence in procedure and general approach, its experience should be taken into account.

(7) *General performance and competence.* If the applicant has not been active in the subject area or in analogous proceedings, demonstrated ability in other activities is relevant, as is evidence that the applicant has technical capability to perform the activities it proposes. An applicant requesting funds to perform survey research should prove its competence in conducting surveys, or in knowing whom to hire for survey work. A request for funds for cross-examination should establish the expertise of the proposed cross-examiner.

(8) *Contributions.* Another consideration is the applicant's willingness to spend some of its own money on the proceeding. This indicates that the applicant believes the problem is significant to the interest it represents and that its participation is important. This applies only if an applicant's financial state would permit it to finance partially, but not entirely, the cost of participation. An applicant will not be penalized if it cannot afford any contributions.

None of these factors is determinative in itself. These criteria simply set forth different considerations used by the Bureau in determining whether an application meets the statutory standard.

G. FINANCIAL REQUIREMENTS

The Improvement Act requires a finding that the applicant "is unable effectively to participate in such proceeding because such person cannot afford to pay costs of making oral presentation, conducting cross examination, and making rebuttal submissions in such proceeding."

This language clearly allows compensation to an applicant with no resources, and it clearly excludes compensation to a rich applicant whose economic interest would be directly affected and who thus has substantial ability and incentive to protect its interest. Also, the statute is phrased in terms of the inability of the applicant, not the inability of the interest, to pay for participation. Nonetheless, it is essential to examine the position of the interest underlying the

application. An applicant without resources representing a rich interest is regarded with skepticism. If the applicant truly represents such an interest, there should be other ways for it to obtain funds.

The applicant should use the criteria in the Commission's Rules of Practice as guides to eligibility. First, the Commission requires that the application include information relating to "the economic stake of the interest involved as compared with the cost of participation." If this economic stake is small, then it can be presumed that the applicant would have difficulty raising the necessary funds from the interest.

The second criterion applies when the interest is economic and the cost of participation is small as compared with the economic stakes involved. In such circumstances a representative of the interest would normally be expected to finance its own participation. There is an exception, however, when a large total stake is divided among many separate people so that each individual has little incentive to participate. If, for example, an industry practice costs 50 million consumers $10 each, the total economic stake is high and it would be difficult to say that the "interest" in the abstract could not afford to participate. In reality, the money and time spent obtaining contributions would be enormous.

The Commission's rules recognize that compensation money should be available when problems of organization and contribution cannot be overcome. They do require that the applicant include information on "the feasibility of contributions to the cost of the participation by individual representatives of the interest."

The third criterion requires information on the resources of the applicant or the interest represented. A well-funded organization or interest has a more difficult time making the requisite showing that it is unable effectively to participate without Commission compensation. The statute does not prohibit the Commission from funding established groups which have been able to maintain themselves through general public subscriptions, foundation grants, sale of consumer goods, or services or other devices. It regards the question whether an applicant would otherwise be unable to participate as a factual inquiry into its circumstances. A group with substantial resources can be eligible if it is unable to participate because its resources are already committed to other areas, if it has undertaken to cover too many different activities to focus resources on a project as large as an FTC rulemaking, or if other factors would preclude participation.

Conclusion

This pamphlet gives a general explanation of trade regulation rulemaking under the Improvements Act. It also interprets the policy and legal issues which have arisen under the compensation program. A second pamphlet, "Applying for Reimbursement of FTC Rulemaking Participation," describes the details of applying for compensation and includes an application form, with instructions on how to fill it out.

Applying for Reimbursement of FTC Rulemaking Participation

Introduction

This booklet explains how you apply for reimbursement for participation in a Federal Trade Commission rulemaking proceeding if the interest you have or represent cannot be presented adequately without compensation. Before you apply you should make sure that you understand the rulemaking process and the statutory criteria used to determine your eligibility for compensation. The rulemaking process itself and the program set up to review compensation applications are explained in another booklet, "Rulemaking and Public Participation Under the FTC Improvement Act."

Choosing Phases of Participation

Phases of participation are (A) preparation (preparing written comments or oral testimony prior to hearing), (B) presentation (presentation of oral testimony and/or crossexamination of other witnesses at hearing and/or filing rebuttal statements after the hearings have concluded), and (C) posthearing participation (submitting posthearing comments after the staff and presiding officer's reports have been placed on the record).

You need not file a complete application at the outset. You may ask for compensation for one type of participation immediately and broaden your application after further study. This will allow rapid decisions on those types of participation that require immediate response and more detailed preparation and review of others. Your performance on one phase will, of course, be considered in the review of applications for participation in later phases.

You should not submit an application for post-hearing rebuttal participation until after the hearings are over. At that time, you will be able to state with some specificity which isues you have determined to rebut.

Your application for post-hearing comments should come after you have read either the Presiding Officer's report or the final staff report or both.

The Application Process

I. *Timing of applications.* Although an application for compensation may be submitted any time after the initial notice, it is usually to your advantage to file it as soon as possible after initial notice of rulemaking appears. Applications are generally reviewed and approved or rejected within the context of the proceeding as it stands at the time of the review. An application can be rejected because another applicant representing the same interest has already been funded and additional participation is not needed for adequate representation.

If you need time to prepare your request, inform the Bureau that you intend to apply. Such a notice of intent will help the Bureau in its review of earlier applications. To ensure timely decision, you should estimate the time needed to prepare for the hearings and make sure to submit your application well ahead of the time needed.

II. *The Review Process.*—A. *Submitting your application.* Send your application to: Special Assistant for Compensation, Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Soon after receiving your application (usually within 7 working days), the Special Assistant for Compensation will send you a letter acknowledging receipt. The letter will also note any obvious deficiencies in the application or additional information required for a decision. If the application is complete, the letter will give the date (usually within 3 weeks of receipt of the application) by which a final decision should be made.

Direct any inquiries about the status of your application to the Special Assistant for Compensation.

B. *Review of your Application.* (1) The Special Assistant for Compensation gives your application to the Presiding Officer, who prepares recommendations for the Bureau Director. Staff attorneys involved in the proceeding file separate comments on the state of the record.

(2) The application, Presiding Officer's recommendation, and staff attorneys' comments then go to the Office of the Bureau Director for review.

(3) If your application is approved, the Bureau Director will then send you a letter containing the formal approval and the budget as approved by the Bureau. If it is rejected, the Bureau Director's letter will explain the reasons your application was not funded.

HOW TO WRITE YOUR APPLICATION

I. *Narrative Proposal.* First present your narrative justification. To minimize copying cost, please type your proposal single spaced on letter size (not legal size) paper. In your narrative, address the following issues:

a. The interest you represent, the relevance of the proposed rule to that interest, and the reason participation by the interest in the Trade Regulation Rule Proceeding is necessary for a fair determination of the proceeding taken as a whole.

b. Your description of yourself or your organization, its structure, and its normal activities; the reasons it is an appropriate representative of the interest; and why your participation is necessary for an adequate representation of the interest.

c. The reasons you require compensation to participate effectively in the proceedings. This section should include information on your operating budget for the current year, financial statements describing the sources and uses of funds relating to ongoing programs and activities, and any other pertinent financial information. You should also explain here why the interest you represent cannot finance the participation.

d. How you intend to use the funds during each stage of participation. Insofar as possible, you should describe the specific evidence, activities, studies, or other outputs that will result in each stage of participation. You should match these with the itemized budget, which is Part II of your application, including responsibilities of each staff member, expert and consultant; information on time and salary for staff members; time and fees for experts and consultants; travel and per diem; and other costs.

e. The resumes of the proposed major participants.

f. Any other considerations you feel are significant.

II. *The Proposed Budget.* After you have completed your narrative proposal, use the budget form for Part II of you application (included at the end of this booklet). The Special Assistant for Compensation can send you additional copies of budget forms. The following pages provide an explanation of this budget form, of keeping accounts and receipts for reimbursement claims and audits, and of some miscellaneous matters.

* * * * *

Limitations on Compensation

I. *Costs Incurred in Preparing the Application.* The Commission's Rule 1.17 provides that compensation is not available for costs incurred before the Bureau has received your application.

II. *Reasonable Costs.*—A. *General Standards.* According to the statute, the compensated expenses of participation must be "reasonable" as well as actually incurred.

Fees for consultants and experts are limited to the maximum rates the Commission can pay its own consultants and experts.

Travel expenses are limited by government standards. Commercial travel must be coach class. Auto mileage is reimbursed at a rate of $.15 a mile. Per diem expenses exceeding the rate of $37 per day are not reimbursable, no matter where they are incurred. Per diem is meant to include lodging and meals. Your per diem claim must be accompanied by hotel or motel receipts. If you stay

in a private home or otherwise incur no lodging expenses, you are limited to $17/day per diem for meals.

The Bureau regards Federal Civil Service salaries as proxies for market rates for determining payments to third parties. It will not approve rates exceeding those paid government employees of similar experience and background.

There are two charts attached to the application blank for budgets (at the end of this booklet). One explains maximum hourly rates and other expenses for which third party law firms may bill you and for which you may be reimbursed by compensation funds. It also explains the method by which you determine the cost to you of any staff (salaried) attorneys for reimbursement purposes. The second chart details the means of determining your overhead and indirect costs.

B. *Salaried Employees.* For your salaried employees or the salaried employees of your group, the hourly rates you quote for each must accurately reflect their prorated salaries plus fringe benefit costs to your organization, such as FICA. The ceiling on these hourly rates is explained in the attached charts.

C. *Unanticipated Expenses.* You should devote sufficient planning to prepare your budget with reasonable accuracy. It is to your benefit that the Bureau authorize any additional funds prior to your incurring the extra costs. The Bureau cannot always approve supplemental payment authorizations because funds may already have been fully committed elsewhere.

To request supplemental fundings, you should send a letter to the Special Assistant for Compensation explaining and justifying the request and enclose a supplemental budget for these additional costs which you anticipate incurring. Similarly, if you wish to reallocate among major budget categories, you must send a letter explaining the reallocation. Unless you receive written approval of any costs above your budget categories or your maximum allowed budget, you will not be reimbursed for those costs.

MISCELLANEOUS ISSUES

A. *Regulated interests.* The Improvement Act specificaly provides that compensation can be paid for representation of an interest which would be regulated under the proposed rule. Such application should be made on the same forms and will be treated in the same manner as any other application.

The extent to which the Commission can consider such applications is limited by the statue in that compensation paid to such persons may not exceed 25 percent of the aggregate amount paid as compensation to all persons in a fiscal year.

B. *Right to participate.* The grant or denial of an application for compensation does not affect your right to participate in the proceeding applied for.

However, an application for compensation is not a substitute for the communications to the Presiding Officer required by the Commission's rules of practice. To participate in the proceeding, you must follow the rulemaking procedures whether or not applying for or receiving compensation.

In appropriate circumstances, the Bureau may approve compensation for a particular activity contingent upon the Presiding Officer's independent approval. Nothing in the compensation program affects the Presiding Officer's authority over the proceedings. If the Presiding Officer chooses to limit cross-examination privileges by designating a representative for similar interests, funds for cross-examination purposes can be claimed only by that representative.

C. *Advance Payments.* Rule § 1.17(e)(1) provides for advance payments where necessary. As appropriate, advances may be granted in some instances in amounts up to 50 percent of the maximum approved budget. Further advances are contingent on reconciliation of your reimbursement claims and evidence of work in progress. If for any reason the money is not spent for the funded purposes, or if particular expenditures are not allowed, you must refund the money.

All participants, except state governments as defined in Pub. L. 90-957, must refund all interest earned on advances of compensation funds directly to the U.S. Treasury.

D. *Accounting, Financial Management, and Auditing Standards.* Compensated participants must account for all compensation funds using generally accepted accounting practices which must be consistently applied, regardless of the source of funds. You must support all expenditures of compensation funds by accurate and neat records and receipts. Itemize these records and receipts in sufficient detail to show the exact nature and cost of the expenditures for each account. All personnel should sign statements attesting to the number of hours worked, the nature of the work, and the hourly rate. Salaried employees should state their weekly, biweekly, or monthly salary to explain the basis for the prorated hourly rate. There should also be an explanation of any fringe benefits added to that rate. Copies of these records and receipts will be the basis for your reimbursement claim.

Reimbursement claims must be requested within 60 days following the completion of your participation. Any advances will be subtracted from the approved reimbursement. You needn't wait until the end of your participation to submit reimbursement claims if you have outstanding obligations in connection with your participation in the proceeding and wish to get interim repayment.

To prepare and maintain acceptable accounting records:

1. Maintain a separate bank account for all funds advanced by the Commission to support your approved budget for participation.

2. Subdivide your accounts into various budget categories approved by the FTC.

3. Support all expenditures charged to the budget categories with vouchers or receipts approved by the authorized director of your project.

4. Maintain time-and-attendance records to support salary and wages which you claim. Have each person sign his time-and-attendance record. Include and explain all travel receipts.

RETENTION OF RECORDS

Accounting records are considered to be all records relating to the receipt and expenditure of FTC compensation award funds and to the expenditure of the participant's contributed share of the cost of a project. Records required for retention include all accounting records and related original and supporting documents that substantiate costs charged to the rulemaking activity.

If compensated, you must keep your accounting records for participation in a rulemaking proceeding for at least 3 years. Such records are subject to audit by the Federal Trade Commission and the General Accounting Office. If you disagree with the results of the reconciliation of your reimbursement claim or of any audit, present your case to the Director of the Bureau of Consumer Protection within 30 days of the receipt of notification of the reimbursement claim or audit results. The decision on such appeals by the Bureau Director is final and conclusive. In all cases, audit findings referred to you for comment must be responded to not more than 30 days after receipt of such findings. You must file a written response which meets each issue raised by the auditor subsequent to each audit performed either by FTC agency staff or by the FTC's contracted auditors.

E. *Allocation of funds to particular proceedings.* The Bureau does not allocate funds among the individual rulemaking proceedings or limit the amount that may be granted for compensation in any particular proceeding. In the future, however, it may set forth in the initial notice a limit for funding in a particular proceeding and reject applicants automatically once this ceiling has been reached. Notice of any such procedure would be included in the initial notice of the rulemaking proceedings.

F. *Individual witness, consultant, and expert compensation.* The Federal Trade Commission has separate procedures for Commission staff to hire experts and consultants and to pay them for their work, including appearances at hearings. In addition, the FTC has a program whereby staff can compensate individual witnesses for expenses incurred in the course of participating in hearings. Individuals wanting reimbursement for such expenses should contact Commission staff well in advance of their appearances and obtain information about these programs. They should not file applications under the compensation program unless the required statutory findings can be made.

If you wish to locate your own witnesses and to include provisions for witness payment in your application budget, keep in mind that the Federal Trade Commission allows a witness fee of $20 per day of testimony plus $16 for subsistence expenses. In addition, witnesses may be reisbursed for their actual travel expenses, including intra-city cab fare.

G. *Performance standards.* If your application and budget are appoved and your participation costs are to be reimbursed, the presiding officer will be asked afterward to comment on the quality of your work. He will also report on his estimation of the appropriateness of your claimed expenditures in terms of your contribution to the proceeding.

If you then apply for reimbursement of participation costs in an additional rulemaking proceeding, the Bureau Director will consider the quality of your past performance.

H. *Role of the Commission Staff.* The staff will assist any prospective applicant only by describing information on the material to be introduced into the rulemaking record. Direct your questions about the proceedings to the Assistant Director for Rulemaking and about the application process to the Special Assistant for Compensation.

Neither the staff nor the Presiding Officer will help write an application, provide special favors or services to any particular applicant, or penalize any applicant for taking a position at variance with that of the staff. In addition, neither the staff nor the Presiding Officer can commit the Bureau to approving or rejecting a particular application. You can help maintain the impartiality of this program by contacting the staff only for factual information on the rulemaking proceeding. Direct all inquiries about the status of your application to the Special Assistant for Compensation rather than to the Presiding Officer or the staff.

Keep in mind that, if your application is approved, you will not be "working for" the Federal Trade Commission. Therefore you cannot rely on FTC clerical or administrative assistance of any kind in carrying out your participation. Nor can the FTC aid you by using its authority, e.g., subpoena power, to help you obtain information which you could not otherwise obtain.

Publication authorized by the Commission.

JAMES A. TOBIN,
Acting Secretary.

CHART A.—*Maximum billable rates for participating [1] attorneys (Effective date: May 28, 1977)*

(I) Years of related experience [2]	(II) GS	(III) Salary	(IV) Hourly rate [3]
0 up to 2	11-10	$22,177	$21
2 up to 4	12-10	26,571	26
4 up to 6	13-10	31,598	30
6 up to 8	14-10	37,347	36
Over 8	15-10	43,923	42

[1] Staff attorneys (on salaries) must calculate their hourly cost to their organization by dividing their annual salaries by 1,672 hours. (Government work hours per year excluding sick leave, vacation time, and holidays are figured at 1,672 hr/yr.) To this figure is added the percentage cost of any retirement (social security), health and life insurance benefits, workman's compensation, and unemployment insurance borne by the organization for each employee participating in this program. Indirect costs are accounted for by adding on 25 pct of the total hourly rate calculated. Only the actual cost of salaried attorney's time may be billed for by the organization (up to the maximums in col. IV).

[2] Applicants must submit attorneys' résumés.

[3] The participating attorney may bill separately only for travel (commercial rates and $37/d flat rate per diem), secretarial costs ($6/h), long distance telephone, transcripts and copying costs. Paralegal and other added professional hourly rates depend on comparison of resumes with comparable civil service ratings.

CHART B

Effective Date: May 28, 1977

OVERHEAD (INDIRECT COSTS) AND FRINGE BENEFITS

I. *Overhead* includes such items as heat, light, space, basic telephone, and indirect administrative costs. You may add a flat percentage (25%) of each employee's hourly rate for overhead.

Not included in overhead are:

1. *Secretarial hours* ($6/hour flat rate, includes all fringe benefits but does not include 25% overhead).

2. *Travel*—

A. Intracity transportation (must be documented if over $15; otherwise must be itemized and affirmed by applicant).

B. Intercity transportation $37/day flat per diem for means and lodging; commercial class plane, train, or bus; or 15¢/mile for private auto (must be documented: hotel receipts, all commercial tickets, and an itemization of each travel expense by date, person traveling, locations, and any other pertinent information).

3. *Direct* administrative costs such as bookkeeping, xeroxing, and equipment rental.

II. *Audited Overhead Rates*—If the GAO has audited your organization's overhead calculations, you may use the percent figure assigned to you by GAO. Submit documentation and an itemization of costs included in your overhead rating when you submit your application and budget.

III. *Fringe Benefits* should include each employee's cost to you over and above the salary you pay each person. For example, figure the percentage costs of unemployment compensation, health and life insurance, workman's compensation, and social security tax which are borne by your organization for each employee. Do not include sick leave, vacation time, and holidays, as they are figured in the 1672 hours/year prorated salary calculation (see Chart A, Footnote 1).

BUDGET FOR PARTICIPATION IN FTC RULEMAKING

[See Back for Instructions] Page of

Rulemaking Proceeding _____

Name of Applicant _____

Address _____

_____

_____

Name of Contact _____

Telephone _____ Date of Application _____

TO BE COMPLETED BY FTC

Document Control No. _____

Application Received _____

Rulemaking Number _____

Program Code _____

Presiding Officer _____

1.0 PHASE OF PARTICIPATION (Check Only One)

- ☐ Preparation Prior to Hearing
- ☐ Participation in Hearing
- ☐ Post Hearing Participation

- ☐ Original Request
- ☐ Supplemental Request
- ☐ Reimbursement Claim
  - ☐ Partial (Submission No. _____)
  - ☐ Final

2.0 BUDGET REQUEST: Attach Narrative Proposal and Resumes (For Original Request Only)

3.1 PERSONNEL COMPENSATION COSTS

Name and Title (A)	Work Description (B)	Hourly Rate (C)	Planned Work Hours (D)	Total Request (E)	Approved Amount (F)	Reimbursement Claim (G)
			Subtotal of Above (H)			
			Subtotal of Additional Pages (I)			
			Total Personnel Compensation Costs (J)			

3.2 GENERAL OPERATING COSTS

Item of Expense (A)	Explanation (B)	Total Request (C)	Approved Amount (D)	Reimbursement Claim (E)
	Subtotal of Above (F)			
	Subtotal of Additional Pages (G)			
	Total Operating Costs (H)			

Total Personnel and Operating Costs

4.0

A. Advance Payment This Request		
Total Advance Payments to Date		

B. Approved: _____ Director, BCP

C. Availability of Funds Certification: _____

D. I certify that the above claim for reimbursement is true and correct and that payment has not been received: _____ Applicant Signature _____ Date

5.0 (Check One) ☐ Net Payment Due Applicant

☐ Net Remittance Due FTC (i.e., Total Cost Less Advance Issued)

INSTRUCTIONS

1.0 PHASE OF PARTICIPATION: CHECK THE APPLICABLE PHASE OF PARTICIPATION. COMPLETE SEPARATE FORM FOR EACH PHASE. A DESCRIPTION OF EACH PHASE CAN BE FOUND IN "APPLYING FOR REIMBURSEMENT OF FTC RULEMAKING PARTICIPATION."

2.0 CHECK ORIGINAL IF THIS IS YOUR FIRST SUBMISSION; CHECK SUPPLEMENTAL IF WE REQUESTED ADDITIONAL INFORMATION OR IF YOU ARE REQUESTING ADDITIONAL FUNDS FOR AN ALREADY APPROVED BUDGET; CHECK REIMBURSEMENT WHEN YOU SUBMIT REIMBURSEMENT CLAIMS. FOR EACH REIMBURSEMENT CLAIM FILED, CHECK WHETHER IT IS A PARTIAL OR FINAL AND NOTE WHICH SUBMISSION THIS IS (I.E., 1ST, 2ND, ETC.).

3.0 ATTACH NARRATIVE PROPOSAL OUTLINING WORK TO BE PERFORMED.

3.1A FOR EACH INDIVIDUAL ATTACH A RESUME AND ON SUPPLEMENTALS ATTACH DATA FOR ONLY NEW PERSONNEL LISTED.

3.1B DESCRIBE WORK TO BE PERFORMED.

3.1C SEE LIST OF STANDARD COST FOR APPLICABLE RATES (ATTACHED).

3.1D GIVE PLANNED TOTAL HOURS FOR EACH PERSON.

3.1E MULTIPLY COLUMNS (C) AND (D) TO OBTAIN THIS TOTAL. I.E., RATE X HOURS = TOTAL REQUEST.

3.1F THIS WILL BE COMPLETED BY FTC TO REFLECT APPROVED BUDGET.

3.1G COMPLETE WHEN REQUESTING REIMBURSEMENT AND ATTACH RECEIPTS, EXPENSE DOCUMENTATION AND VERIFICATION OF WORK COMPLETED.

3.1H TOTAL OF ABOVE COLUMN.

3.1I SUBTOTALS FROM ADDITIONAL PAGES.

3.1J TOTAL OF 3.1H AND 3.1I.

3.2A INCLUDE TRAVEL, PER DIEM, SUPPLIES AND ALL OTHER EXPENSES.

3.2B INCLUDE NUMBER TRAVELING AND DESTINATION, DAYS OF PER DIEM, ETC.

3.2C LIST TOTAL REQUEST FOR EACH EXPENSE ITEM.

3.2D THIS WILL BE COMPLETED BY FTC TO REFLECT APPROVED BUDGET.

3.2E SAME AS 3.1G.

3.2F TOTAL OF ABOVE COLUMN.

3.2G SUBTOTALS FROM ADDITIONAL PAGES.

3.2H TOTAL OF 3.2F AND 3.2G.

4.0A INCLUDE AMOUNT OF ADVANCE PAYMENT REQUESTED AND IF SUPPLEMENTAL, TOTAL ADVANCE PAYMENTS TO DATE.

4.0B TO BE COMPLETED BY FTC.

4.0C TO BE COMPLETED BY FTC.

4.0D AUTHORIZED APPLICANT SIGNATURE REQUIRED FOR EACH REIMBURSEMENT CLAIM.

5.0 TO BE COMPLETED BY FTC AFTER AUDIT OF REIMBURSEMENT CLAIM.

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